SCOTT HARSHBARGER

Attorney General
Commonwealth of Massachusetts

SECOND ANNUAL POLICE CHIEFS' CONFERENCE

supplemental material
September 29, 1992

Bentley College
Waltham, Massachusetts

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(617) 727-2200

The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

POLICE CHIEFS' CONFERENCE
September 29, 1992
Bentley College, Waltham, MA

AGENDA

8:00 - 8:30 a.m.	**Registration** Coffee & Pastry
8:30 - 8:50 a.m.	**Introductory Remarks** Scott Harshbarger Attorney General
8:50 - 9:15 a.m.	**Significant Case Law, Legislative Developments, & Pending Legislation** Diane Juliar, Director of Policy & Training Assistant Attorney General
9:15 - 10:00 a.m.	**Internal Affairs Investigations after Carney v. Springfield** Edward Rapacki, Chief, Criminal Bureau Assistant Attorney General
10:00 - 10:45 a.m.	**Use of Narcotics in Reverse Undercover Sting Operations: Procedures/Guidelines** R. Michael Cassidy, Deputy Chief Criminal Bureau/Assistant Attorney General Nancy Ridley, Department of Public Health, Division of Food & Drugs
10:45 - 11:00 a.m.	**BREAK**

Police Chiefs' Conference
September 29, 1992

AGENDA (cont.)

11:00 - 12:00 noon **Community Policing**

Mark Moore
Guggenheim Professor of Criminal Justice
Policy & Management
Kennedy School of Government

Chief Allen W. Cole
Lawrence Police Department

Chief Brent Larrabee
Framingham Police Department

12:00 - 1:00 p.m. **Open Discussion**

Discussion Leader: Scott Harshbarger

- Issues of concern to Chiefs

ASSISTANCE AND CONTACTS AT THE OFFICE OF THE ATTORNEY GENERAL

Below is a list of individuals at the Office of the Attorney General whom you can call for assistance. The main office number for all extensions listed below is (617) 727-2200. The office address is: Office of the Attorney General, One Ashburton Place, Boston, MA 02108.

EXT.

Scott Harshbarger, Attorney General.....2042

Thomas Green, First Assistant Attorney General.....2057

CRIMINAL BUREAU

Edward Rapacki, Bureau Chief.....2810

Susan Spurlock, Deputy Bureau Chief.....2812

Michael Cassidy, Deputy Bureau Chief
Chief, Narcotics Division.....2517

Pamela Hunt, Chief, Appellate Division.....2826

Patricia Bernstein, Chief
Public Integrity Division.....2856

David Burns, Chief, Special Investigations Division.....2589

Lt. John (Jack) Kelly, Chief,
Criminal Investigations Division.....2812

Martin Levin, Chief,
Environmental Strike Force.....2858

Maurice Cunningham, Chief
Asset Forfeiture Unit.....2510

Michael Kogut, Chief,
Medicaid Fraud Control Unit.....3814

James Bryant, Chief, Insurance Fraud Unit.....2866

Brian Burke, Chief,
Division of Employment & Training.....727-6824

FAMILY AND COMMUNITY CRIMES BUREAU

Jane Tewksbury, Bureau Chief.....2049

SIGNIFICANT CASE LAW, LEGISLATIVE DEVELOPMENTS, & PENDING LEGISLATION

SIGNIFICANT CASE LAW AND LEGISLATIVE DEVELOPMENTS

Attached are excerpts from, or summaries of, selected pieces of legislation, both enacted and pending, which may be of interest. Other legislation, and several cases, will be discussed during the presentation.

I. CRIMINAL JUSTICE INITIATIVES -- CRIME SUMMIT PACKAGE

See Attachment 1.

II. CHAPTER 90G, CIVIL INFRACTIONS

See Attachment 2.

III. DOMESTIC VIOLENCE LEGISLATION

In Effect

1. Stalking, G.L. c. 265, s.43. To be discussed.

2. Domestic Violence Registry ("Barrett Bill"), Chapter 188 of the Acts and Resolves of 1992, G.L. c. 208, s. 34D.

   See Attachment 3.

Proposed

1. S. 753, An Act Amending Chapter 209A to Further Protect Victims of Domestic Abuse, Attachment 4.

   This legislation seeks to amend C. 209A, s. 3, to authorize a judge to include in a domestic violence restraining order an order allowing police to seize firearms at the scene of a domestic violence incident, under certain circumstances, and to allow for revocation of FID cards and licenses to carry when there is probable cause to believe that a weapon was used or threatened to be used in connection with a domestic abuse offense.

2. S. 842, An Act Relative to Emergency Restraining Orders, Attachment 5.

This legislation would amend C. 209A, s. 5, by directing police not to call an on-call judge for an emergency restraining order when an abuser is under arrest, and to advise the arrestee that such an order is in effect prior to releasing him or her from custody on bail (implying the automatic issuance of such an order).

IV. COURT REFORM LEGISLATION

H. 5944, An Act Improving the Administration and Management of the Trial Court of the Commonwealth

This is the "court reform bill" reported out by the Judiciary Committee and now in House Ways and Means. It would, among other things, establish a statewide Juvenile Court. This court would handle all delinquency matters, CHINS and care and protection cases, termination of parental rights hearings, non-support cases in which the child at issue has another matter pending in the juvenile court, and 209A domestic violence cases in which the abused person is the caretaker of a minor child.

Because the new juvenile court divisions would be held in only some of the existing District Courts (for example, Middlesex County will have five divisions of the juvenile court sitting in five of the twelve current District Court locations), this legislation would have a significant effect, in terms of potential cost and inconvenience, to police, prosecutors, witnesses, juveniles and their families. For example, any delinquency cases now handled in the Ayer District Court would be heard in the Lowell District Court under the proposed legislation. This would mean that police departments currently within the jurisdiction of the Ayer District Court could not realistically schedule an adult case and an unrelated juvenile matter in which the same officer was to appear as a witness on the same day, and that witnesses on cases involving adult and juvenile co-defendants would need to appear in different courts on different dates on these matters.

ATTACHMENT 1

THE COMMONWEALTH OF MASSACHUSETTS

CRIMINAL JUSTICE INITIATIVES

I. Violent Crime

A. Bail (dangerousness as a co-equal factor with risk of flight) House No. 5772

B. Drive-By Shootings House No. 5363

C. Aggravated Assault House No. 5365

D. Obstruction Of Justice Senate No. 134

II. Prosecutorial Tools For the 1990's

A. Immunity House No. 945

B. Electronic Surveillance House No. 5369

C. Pen Register and Trap and Trace Device Senate No. 745

D. State-Wide Grand Jury Senate No. 744

E. Abolish Trial De Novo House No. 5773

F. Permitting Disclosure Of Tax Returns For Use In Criminal Investigations Senate No. 1256

III. White-Collar Crime

A. Increase Penalty For Bribery Senate No. 135

B. Increase Penalty For Major Frauds, Thefts and Embezzlement House No. 5358

C. Increase Fines For Felonies and Misdemeanors House No. 5359

I. VIOLENT CRIME

A. AN ACT TO ENSURE THE SAFETY OF THE PUBLIC AND THE APPEARANCE OF DEFENDANTS IN CRIMINAL MATTERS (HOUSE NO. 5772)

Current Law

Under the existing bail system in Massachusetts, a judge's consideration in setting bail is limited to assessing the risk that the arrestee might flee prior to trial. Judges are statutorily prevented from considering the danger an arrestee poses to an individual or the community in setting bail.

Proposed Changes

This Act would allow judges and other persons authorized to set bail to consider the danger an arrestee poses to any person or the community as an equal factor along with the risk that the arrestee might flee prior to trial. In addition, this Act would prevent clerks, bail commissioners or masters in chancery from releasing an arrestee charged with violating domestic restraining orders from the police station until a judge has had the opportunity to consider fully the question of bail at the arrestee's initial court appearance.

Illustration of Need

Few failures of our criminal justice system are more tragic and yet at the same time so amenable to immediate solution through legislative action than the release of demonstrably dangerous criminal defendants back into our community. Providing statutory authority to allow judges in determining bail to consider the danger a criminal defendant poses to another individual or the community is a key step we can and must take to improve our criminal justice system. A recent case in Essex County illustrates in graphic terms the human tragedy that can be avoided by allowing judges to consider danger to the community in bail determinations. In this case the defendant, the next door neighbor of a twelve year old female victim, broke into the victim's home at night and forcibly raped her. His continuing dangerousness to the victim was evident from his unsuccessful suicide attempt after the rape, his eighteen prior psychiatric hospitalizations, his criminal record reflecting bizarre behavior and especially his close proximity to the victim. The defendant made bail of $50,000 cash. Out of fear, the victim's family sold their home of longstanding and moved out of town.

A 1988 study by the United States Department of Justice further indicates the human cost of releasing dangerous criminals into the community pending trial. The study found that in 75 of the Nation's most populous counties in 1988, 18% of released defendants were known to have been rearrested for the commission of a felony while in the community on pretrial release. Two-thirds of those rearrested while on release were released on bail or personal recognizance yet again. Passage of this legislation will immediately make our streets safer, reduce domestic violence and improve the public's confidence in our criminal justice system.

Status

This bill is a redraft of the Governor's bail proposal which was reported favorably out of the Joint Committee on Criminal Justice. The bill was passed to be engrossed by the House of Representatives on June 9, 1992 and is now before the Senate Committee on Steering and Policy.

B. AN ACT TO FURTHER PROHIBIT AND PUNISH DRIVE-BY SHOOTINGS AND THE DISCHARGE OF FIREARMS IN THE COMMUNITY (HOUSE NO. 5363)

Current Law

Existing law does not specifically provide for the crime of discharging a firearm from a motor vehicle, "drive by shooting" or for the crime of shooting at dwelling houses and buildings.

Proposed Change

This Act will create two new crimes punishable by penalties of up to a maximum of twenty years imprisonment and a fine of up to $50,000: (1) for shooting at occupied or unoccupied dwelling houses, occupied schools, buildings or motor vehicles; and (2) for discharging a firearm from a motor vehicle. Any such shooting which results in personal injury would be punished by a mandatory miniumum of five years.

Illustration of Need

Drive-by shootings and shootings at have become serious crime phenomena throughout the country, and are now occurring with alarming frequency here in Massachusetts. Such acts of violence, often either random or gang related, tear at our urban communities, injure or kill innocent bystanders, and spread fear in our neighborhood streets. They can no longer be tolerated.

In a case recently prosecuted by the Attorney General's office in Suffolk Superior Court, a defendant walking on the street spotted a rival gang member in a passing car, pulled a hand-held Uzi automatic weapon and opened fire on the vehicle.

Caught in the crossfire was an innocent motorist who had her six year old child in the car. Although sprayed by the exploding windshield, the victims were not hit by the gunfire or seriously injured.

The defendant was charged with assault with intent to murder and eventually pled guilty and received a state prison sentence. However, in this case and in others, there is often a proof problem with the "intent to murder" component of the charge. Thus, the charge is often reduced to assault with intent to commit a felony, (which carries a 10 year penalty) or the assault with intent to murder sentence is less on a plea because the prosecutor has difficulty meeting the "assault with intent to murder" burden beyond a reasonable doubt.

This proposed legislation would fill a gap in the criminal laws by establishing punishment at levels which fully reflect the destruction that such conduct wreaks upon our urban communities.

Status

This bill was filed by the Governor on March 12, 1992 and referred to the Joint Committee on Criminal Justice. The Senate non-concurred on May 27, 1992 and referred the matter to the Joint Committee on the Judiciary. The bill has not been given a final committee assignment and public hearings have yet to be scheduled.

C. AN ACT RELATIVE TO AGGRAVATED ASSAULTS (HOUSE NO. 5365)

Current Law

Currently, particularly heinous assaults committed without the use of a dangerous weapon are prosecuted as misdemeanors because the facts do not substantiate a charge of assault with intent to murder or assault with intent to commit a felony.

Proposed Change

This Act establishes the crime of "aggravated assault" which targets attempts to cause serious bodily injury to another or purposely causing such injury or assaults which are committed by people who are masked or otherwise concealed, or which are committed by persons entering the private dwelling of the victim with the intent of committing the assault.

Illustration of Need

Under present law, there is no statute which punishes an aggravated assault, that is, a serious beating involving no weapon but resulting nevertheless in serious bodily injury. This gap is particularly noticeable in domestic abuse and child abuse

cases. For example, under present law, if a woman is abused and battered with fists or is pushed and shoved against a wall, and she receives serious bodily injury -- broken bones, cuts, bruises -- the offense is a misdemeanor that is punishable only by a two and one-half year house of correction sentence, not a state prison sentence. There is now pending in the Springfield District Court a case in which the last thing a woman remembers is that her live-in boyfriend grabbed her by the throat. She woke up in the Baystate Hospital Emergency Room. Her boyfriend had thrown her down a flight of stairs and her neck was broken in two places; her elbow was broken; her ribs were broken; and her lung was punctured. The woman will have to wear a head brace for three to six months. For this offense, her boyfriend will be subject to a maximum penalty of two and one-half years in the house of correction unless the government can prove that he intended to kill her, a difficult element of the crime to prove.

In another much publicized case, a group of young men ranging from age 16 to 21 chased and beat another young man at a McDonald's restaurant in Springfield. One of the young man's friends recognized a group of individuals in the parking lot as people with whom he had had a confrontation a few weeks earlier. The friends went into the restaurant, purchased some food, and returned to the parking lot. One of the men in the other group pointed in the direction of the two friends, broke from the group and signalled. Three men from the group headed towards the two men. The two men ran but one of them was chased through the parking lot. The chase ended when the victim was cornered with his back against a building. The group that chased the victim formed a tight semi-circle around him, leaving no avenue for escape. Some of the group punched the victim, who fell to the ground. Four of five people in the semi-circle kicked the victim who at first covered up, but eventually lay prone on this back with his arms to his sides as the kicking continued. The victim was badly beaten by the group and sustained severe head injuries, leaving him with residual medical problems. Although some of the defendants were convicted of assault and battery by means of a dangerous weapon (a shod foot), another was convicted of assault and battery only. The proposed legislation would provide for an aggravated form of punishment where, as here, the victim sustained such serious injuries.

Status

This bill was included as part of the Governor's crime package at the behest of District Attorney William Bennett and was referred to the Joint Committee on Criminal Justice on March 25, 1992. The Senate non-concurred on May 27, 1992 and referred it to the Joint Committee on the Judiciary. The bill has not been given a final committee assignment and public hearings have yet to be scheduled.

D. AN ACT RELATIVE TO THE OBSTRUCTION OF JUSTICE (SENATE NO. 134)

Current Law

Despite the fact that the offense of obstruction of justice has been recognized at common law for over 130 years, there is no Massachusetts statute which specifically prohibits the obstruction of justice.

Proposed Change

This Act would make it a crime, punishable by up to five years in state prison or up to two and one-half years in jail, for a person who, with intent to influence the investigation of a crime or the performance of a police officer's functions, either willfully provides false information to investigating officers or who conceals information concerning facts material to the pending investigation.

Illustration of Need

In the absence of statutory recognition, the crime of obstruction of justice is very rarely charged, much less punished. The consequence is that there is no deterrent to efforts designed to frustrate law enforcement officers in the performance of their responsibilities. This legislation not only creates such a deterrent, but reaffirms our commonly shared principle that an ordered system of justice requires the participation and honesty of those whose safety it is designed to protect and would bring Massachusetts in line with at least fourteen other states with similar laws.

Status

This bill was filed by Attorney General Scott Harshbarger, Senator William R. Keating, Senator Paul D. Harold and Representative James T. Brett and referred to the Joint Committee on Criminal Justice where it was reported favorably on May 12, 1992. It was referred to the Senate Committee on Steering and Policy where it is presently awaiting a third reading.

II. PROSECUTORIAL TOOLS FOR THE 1990'S

A. AN ACT RELATIVE TO GRAND JURY IMMUNITY (HOUSE NO. 945)

Current Law

Immunity may be granted upon an order of a single justice of the Supreme Judicial Court to those witnesses who were called before the grand jury and refused to testify and only in

proceedings or investigations of the specific crimes designated in the immunity statute.

Proposed Change

This Act will permit the Attorney General and the District Attorneys to seek immunity for witnesses who refuse to testify either at trial or before the grand jury. It also will expand the categories of criminal proceedings in which immunity can be sought to include investigations and prosecutions of all felonies.

Illustration of Need

There is presently no provision for immunizing a witness after a grand jury has returned an indictment. Consequently, many serious cases, including murder, have been jeopardized at the trial stage due to the prosecutor's inability to obtain immunity for witnesses.

There are many instances where a witness, who has testified before the grand jury, refuses to testify at trial on the basis of his fifth amendment right not to incriminate himself. Very often the witness' unwillingness to testify is not the result of fear of self-incrimination (the prosecutors in the vast majority of cases are willing to grant informal immunity) but most often because of fear of retaliation by the defendant or his friends or because the witness, for a variety of obvious reasons, does not wish to see the defendant convicted.

Because the witness only has to show that his testimony will provide a link in the chain of events leading to evidence of any crime, however minute, it is difficult for the Commonwealth to challenge a witness' assertion that he or she might incriminate him or herself. As an example, if the witness to an armed robbery was smoking a marijuana cigarette at the time of his observation, he can validly invoke his fifth amendment rights on the basis that his testimony will tend to incriminate him for the crime of possession of marijuana.

Another example of cases in which the inability to immunize a witness at the trial level seriously jeopardized a conviction involved the brutal murder of a young woman by two men. One defendant, who was acquitted at trial, was called to testify at the trial of the co-defendant. Because the defendant invoked his fifth amendment privilege not to testify, the jury did not have the benefit of his highly relevant testimony during the trial of the co-defendant. Another case involved the prosecution of owners of a restaurant who were charged with deliberately burning the restaurant to collect insurance and to extricate themselves from a failing business. After indictment, and before trial the Commonwealth's investigation led to their accountant who cou..

have provided important information relative to their financial condition and the status of the insurance policies. Once again, because of the invocation of his fifth amendment rights, the jury did not have the benefit of his highly relevant testimony.

It is not only witnesses who are discovered after the grand jury indictment and before trial, however, who create a problem. Quite often, witnesses who have testified at the grand jury develop "cold feet" when the case is called for trial and refuse to testify based on their fifth amendment rights. Gang related crimes of violence, which are on the increase particularly in Brockton, provide examples of witnesses developing this dreaded disease.

Consequently, cases which appeared to be imminently winnable after grand jury presentation, are rendered "losers" by the refusal of witnesses to take the stand and repeat their grand jury testimony. It is not beyond the realm of possibility for a defense lawyer to counsel an important prosecution witness, who happens to be sympathetic to the defendant's plight, to testify at the grand jury and then evoke his fifth amendment rights at trial. The prosecutors inability to immunize this kind of witness at the trial stage leaves him unable to counter this type of strategic maneuvering by the defense.

Another difficulty with the present statute is its restriction to only those offenses which are enumerated. This is evidenced by a case that recently went to the grand jury in Plymouth County involving the rape of a child by a Kingston police officer. One witness was a friend of the child who happened to be the daughter of the police officer's live-in girlfriend. She invoked her fifth amendment rights on the basis that she was present and had contributed to the victims drunkenness prior to the rape and could not be immunized because rape was not included among the enumerated offenses. As a result, this witness' highly relevant testimony will be lost to the Commonwealth unless the statute is amended to include (1) rape as an enumerated offense; and (2) a provision allowing immunity at the trial level.

Status

This bill was filed by Attorney General Scott Harshbarger, Senator William R. Keating, Senator Paul D. Harold and Representative James T. Brett. A public hearing was held on April 1, 1992 before the Joint Committee on the Judiciary where it was referred for further study on July 8, 1992.

B. AN ACT RELATIVE TO ELECTRONIC SURVEILLANCE BY LAW ENFORCEMENT (HOUSE NO. 5369)

Current Law

Under current law, electronic surveillance may only be used by law enforcement officers in the investigation of organized crime. Law enforcement officers must secure a warrant from a judge in order to use electronic surveillance. The application for such a warrant must particularly describe the place or telephone lines to be intercepted.

Proposed Change

This Act would expand the categories of investigations in which electronic surveillance could be used, to include crimes of violence against person or property, any type of organized criminal activity, drug offenses, public integrity offenses and illegal toxic waste dumping. It would also authorize and provide for the limited use (for personal safety purposes) of transmitting (not recording) devices by law enforcement officers operating in an undercover capacity.

Illustration of Need

In the vast majority of undercover drug investigations conducted by police, the culmination of their effort is a lone undercover officer making a drug transaction with the investigation target, while other officers conduct surveillance until the deal is completed and the arrest is made. Typically, the transaction is arranged to take place between the undercover officer and the target in a house, a building or an automobile. Because under Massachusetts law it is difficult to obtain court authorization for even transmitting devices, the officers conducting surveillance on the undercover office have no means to monitor the transaction while the officer is out of visual contact and alone with the target. For the most critical part of the investigation, all communication is lost with the undercover officer, who, to maintain cover, is often unarmed.

In one case, a drug investigation culminated in a planned sale by a target to an undercover state trooper in a parked car in the North End. Troopers conducting surveillance prior to moving into make the planned arrest, lost completed communication with their undercover colleague when the target got "spooked" and went on a "joyride" throughout the city. Fortunately, the undercover officer was not harmed, the deal was completed and an arrest was made.

Status

This bill was filed on March 12, 1992 by the Governor and referred to the Joint Committee on Criminal Justice. The Senate non-concurred and referred the bill to the Joint Committee. The bill has not been given a final committee assignment and public hearings have yet to be scheduled.

C. AN ACT ESTABLISHING GUIDELINES AND PROCEDURES FOR THE USE OF PEN REGISTER AND TRAP AND TRACE DEVICES FOR LAW ENFORCEMENT AUTHORITIES (SENATE NO. 745)

Current Law

Currently, law enforcement authorities must obtain a warrant in order to use a pen register, which records the telephone numbers of outgoing calls, or a trap and trace device, which records the telephone numbers of incoming calls. The process of obtaining a warrant is the same for the interception of oral or wire communications.

Proposed Change

This Act allows law enforcement officers to utilize pen registers and trap and trace devices in the investigation of any criminal activity. The Act sets forth the procedure that a law enforcement applicant and issuing judge must follow in issuing an ex parte order (not a warrant) authorizing the use of the device. The applicant is required to show that the device will be used in furtherance of an ongoing criminal investigation and is likely to gather information relevant to that investigation. The order may be issued for a sixty day period. This procedure mirrors federal law.

Illustration of Need

In a 1980 case, the state's highest court took a position at odds with that of the United States Supreme Court by interpreting the wire tap statute as including the use of pen registers and in-progress traces within the definition of the term "interception" as used in the statute. The most obvious consequence of this interpretation was to require state prosecutors to obtain a wire tap warrant in order to obtain a pen register or in-progress trace. A second, more subtle consequence of the ruling is to effectively remove pen registers and in-progress traces from the arsenal of state law enforcement. Pen registers and trap and trace devices are most useful as early stage investigative devices which can be used to give law enforcement a view of the volume and nature of traffick over a particular target telephone. By allowing the use of pen registers and trap and trace devices upon an ex parte order of the court, law enforcement agencies could utilize these devices

to determine whether a wire tap would be worthwhile. If there is an indication that the sought after information is not likely to be intercepted over the telephone, the authorities will save the time and expense which otherwise would have been devoted to an unsuccessful tap and avoid the much greater intrusion upon individual privacy which a wire tap entails. In sum, reform of the present law will enhance law enforcement capabilities, reduce investigative expense, and preserve individual rights of privacy.

A recent case in Plymouth County illustrates the pressing need for this legislative proposal. In 1967, a young boy was murdered in the northbound rest area in the Town of Whately. The cause of death was from stab wounds to the neck. Blunt trauma to the head was also evident. An intense investigation was conducted at the time and the case has remained unsolved.

In July, 1992, a victim's father received an anonymous telephone call from a party reporting that he had information regarding his son's murder in 1967. The caller stated that he had spoken to a third party in a bar who revealed that he and two other individuals were responsible for the murder. The caller indicated that he wanted to investigate the matter further and would call him back within a couple of days.

Immediately following this telephone call, an attempt was made to get a "trap" on the victim's father's telephone line to trace any further calls. New England Telephone security advised that a court order was necessary to initiate a trap for any reason other than threatening telephone calls. Further research into the matter revealed that a "wire tap" order was necessary to initiate such a trap. A review of Massachusetts General Laws c. 279, §99 revealed that a wire tap was not possible because this particular offense did not constitute organized crime in the "traditional" sense of the word. Shortly after this determination, the victim's father received a follow-up telephone call regarding the murder of his son. The caller left no further helpful information.

The proposed law effectively balances the investigatory demands of law enforcement officers and the publics' right to privacy by allowing the use of these devices in the investigation of all criminal activity, yet requiring judicial supervision of their use. Law enforcement officers will be able to more effectively use these unintrusive devices.

Status

This bill was filed by Attorney General Scott Harshbarger, District Attorney Thomas Reilly, Senator William R. Keating and Senator Paul D. Harold. A public hearing was held on March 16, 1992 before the Joint Committee of the Judiciary where it was referred for further study on May 12, 1992. The Governor filed a

similar proposal as part of his crime package in March of 1992 (House No. 5370).

D. AN ACT RELATING TO STATEWIDE GRAND JURY (SENATE NO. 744)

Current Law

At present, a jury can only sit in one county of the Commonwealth. If a defendant committed crimes in more than one county, a separate jury must sit in each county within which a crime was committed.

Proposed Change

This Act would vest in the Attorney General, with the appropriate involvement of the courts and the District Attorneys, the authority to convene and utilize a grand jury with statewide investigative and indicting authority. The Chief Justice of the Supreme Judicial Court would be empowered to appoint superior court judges to preside over the statewide grand jury.

Illustration of Need

Although existing law gives the Attorney General jurisdiction to investigate and prosecute criminal cases throughout the Commonwealth, there is no mechanism through which the investigation and prosecution may take place in one forum. As a result, grand jury investigations must proceed county by county, potentially involving as many as four or five separate county grand juries in the investigation of a single person, group or continuing course of conduct. In other words, investigations must stop at one county line and pick up anew in the next county with a completely different grand jury simply because a criminal targeted one victim in, for example, Marlborough and another in Southborough. The result is investigations that are inefficient, disjointed and costly.

A graphic example of the dilemma posed by the present system is a case recently prosecuted by the Attorney General's office involving an advance fee scheme. A very capable con man travelled throughout Massachusetts convincing financially troubled homeowners to pay him a fee of $300-$400 for his services in securing them a second mortgage on their homes so as to avoid foreclosure. Many desperate people paid what added up to a lot of money. These scams took place in several counties, so that when trying to fully investigate and address the breadth of the criminal activity the Attorney General's office was faced with the prospect of having to conduct several smaller investigations, with multiple grand juries, in multiple locations.

In May, 1992, a Massachusetts man was indicted on multiple criminal charges in connection with a series of house breaks in several Massachusetts communities. After having to make separate grand jury presentations in four different counties, it was necessary for the Assistant Attorney General handling the case to appear before four separate Superior Court judges to arraign the defendant on all of the charges. This is another clear example of the cumbersome process law enforcement must go through in order to prosecute crimes that cross county lines.

Status

This bill was filed by Attorney General Scott Harshbarger, Senator William R. Keating and Senator Paul D. Harold. A public hearing was held on March 9, 1992 in the Joint Committee on the Judiciary where it was referred for further study on May 12, 1992.

E. AN ACT ELIMINATING THE TWO-TRIAL SYSTEM FOR CRIMINAL CASES IN THE BOSTON MUNICIPAL COURT DEPARTMENT AND THE DISTRICT COURT DEPARTMENT OF THE TRIAL COURT (HOUSE NO. 5773)

Current Law

The de novo system affords defendants prosecuted in the district courts two separate trials for the same offense. Currently, a defendant may waive the right to an initial trial by jury, have the case heard by the judge, and then if convicted, have the case heard again by appealing to a "de novo" trial in the jury session. The de novo trial automatically vacates the earlier conviction and operates as a new trial.

Proposed Change

This Act would abolish the de novo system in all district courts and the Boston Municipal Court by July 1, 1993.

Illustration of Need

De novo forces the courts to expend, unnecessarily, valuable time and resources. Cases often take months to reach a bench trial date. Then, with the expense, inconvenience and presence of police officers and victims, the defendant elects to exercise his right to a second trial. This wears out lay witnesses, depletes town budgets and causes huge delays between the date an offense is committed and the date of disposition. Additionally, trying cases twice uses and depletes resources, such as trial courtrooms, probation officers, police officers, assistant district attorneys and trial judges and clerks. De novo is chiefly responsible for pushing the criminal justice system to the brink of overcapacity. The de novo system does not exist in the superior court where a defendant charged with murder is

afforded one trial. Thus, a defendant charged with drunk driving is afforded the opportunity to have two trials, while a defendant charged with murder is afforded one opportunity to present a defense.

The two-trial system may have served its purpose in Colonial times when justices of the peace heard minor cases and de novo provided a safety net by allowing a defendant to appeal to the circuit judge. Today, however, there is no utility in maintaining a system which not only overburdens our courts but also undermines the public's trust in the criminal justice system's ability to effectively mete out justice.

In a case last year in Bristol County, the defendant was arrested for assaulting his ex-wife and her boyfriend. He was out on bail for 5 separate cases pending in the Jury of Six Session. The cases were scheduled for trial in November of this year. Each charge involved the violation of a restraining order against the defendant's ex-wife. After one of the violations the defendant threatened to kill his ex-wife and children. Ten months after the defendant had been arraigned he pled guilty in the primary court and was given a split sentence with 59 days to serve. He exercised his right to a de novo appeal to the Jury of Six. The judge imposed $1,000 cash bail. The case was given a date for a second trial one year later. While awaiting trial the defendant committed another crime while out on bail awaiting his de novo trial in the Jury of Six.

In another case, the defendant was convicted of 3 separate court order violations involving his wife at his initial trial in the primary court. He received a committed sentence and exercised his right to a de novo appeal to the Jury of Six. The case was continued for trial in the Jury of Six. While out on personal recognizance awaiting his second trial the defendant was arrested for stabbing the complaining witness in the lobby of a probate court judge.

Status

This bill was filed by Senator Michael LoPresti, Jr., Representative Susan D. Schur and Representative William C. Galvin and Chief Justice of District Court Department Samuel E. Zoll. On June 8, 1992 this bill was reported favorably by the Joint Committee on the Judiciary and engrossed by the House of Representatives. It was referred to the Senate Committee on Ways & Means on June 11, 1992 and then discharged to the Senate Committee on Steering and Policy where it is presently pending.

F. **AN ACT PERMITTING DISCLOSURE OF TAX RETURNS AND TAX RETURN INFORMATION FOR USE IN CRIMINAL INVESTIGATIONS (SENATE NO. 1256)**

Current Law

Under the existing law, law enforcement officers are allowed to obtain tax returns and tax return information only for the investigation and prosecution of tax related offenses.

Proposed Change

This Act allows prosecutors to obtain a suspect's tax return or tax return information for the investigation and prosecution of any criminal offense. Under the proposal, the prosecutor is required to move for an ex parte order by a superior court judge who must determine if there is reasonable cause to believe that a criminal act has been committed and that the tax return information is related to this act. The prosecutor must also show that the information sought cannot reasonably be obtained from another source.

Illustration of Need

The proposed legislation provides the Attorney General and the District Attorneys with an important tool to combat criminal activity, especially sophisticated financial crimes. Crimes like money laundering, bank fraud, real estate and securities fraud are best investigated by following what often becomes a complicated and confusing paper trail. Tax returns, whether for individuals, corporations, partnerships or trusts, are a critical part of this paper trail.

In addition to financial crime investigations, further access to tax records for prosecutors would also be important in drug investigations. For example, prosecutors have the burden of proving that money or property of a drug trafficker which they want forfeited to the Commonwealth was derived from drug activities, and not a legitimate enterprise. Tax records would reveal relevant information about what a defendant had declared as legitimate income which could be used to support a forfeiture action.

Status

This bill was filed by Attorney General Scott Harshbarger, Senator William R. Keating, Senator Paul D. Harold and Representative James T. Brett. A hearing occurred on March 18, 1992 before the Joint Committee on Taxation where it is presently pending.

III. WHITE COLLAR CRIME

A. AN ACT INCREASING THE CRIMINAL PENALTIES FOR BRIBERY (SENATE NO. 135)

Current Law

Under current law, persons convicted of bribing a public official or a witness are subject to a maximum imprisonment of 3 years and/or a maximum fine of $5,000.

Proposed Change

This Act will increase the penalty for bribery of public officials and bribery of witnesses to a maximum imprisonment of 15 years, and/or a maximum fine of $50,000 or three times the monetary equivalent of the thing offered as a bribe.

Illustration of Need

Few crimes jeopardize the core principles of our democratic form of government as dramatically as the crime of bribery. Those who serve the public interest are charged with preserving the public trust and violations of that trust often tear irreparably at the fabric of a free society. Courts cannot administer justice if witnesses and employees of the court are bribed. The democratic process cannot function if one individual or group is allowed to receive from a public official a benefit which is unavailable to the decent law abiding citizen. To maintain the integrity of a democracy, such acts of bribery must be punished and punished severely.

This proposed change will ensure that the penalties for bribery reflect the seriousness of the crime.

Status

This bill was filed by Attorney General Scott Harshbarger, Senator William R. Keating, Senator Paul D. Harold and Representative James T. Brett. A public hearing was held before the Joint Committee on Criminal Justice on March 25, 1992 where it was referred for further study on May 28, 1992. The Governor filed a similar proposal as part of his crime package in March of 1992 (House No. 5357).

B. **AN ACT TO INCREASE THE PENALTIES FOR MAJOR FRAUDS, THEFTS AND EMBEZZLEMENTS (HOUSE NO. 5358)**

Current Law

Currently, larceny over $250 is a felony and larceny under $250 is a misdemeanor. The maximum penalty for larceny is 5 years imprisonment and a $25,000 fine.

Proposed Change

This Act would categorize larcenies according to their dollar value, and raise the penalties accordingly. This Act creates two new categories in addition to current law: larceny over $1,000,000 which would carry a maximum 15 years imprisonment and $250,000 penalty; and larceny over $100,000, which would carry a maximum 10 years imprisonment and $100,000 penalty.

Illustration of Need

The Attorney General's office recently indicted a married couple for allegedly stealing $260,000 from the company where the wife worked as a financial officer. The chief financial officer for a Boston area college stole more than a million dollars from the school, was prosecuted by the Attorney General's office, pled guilty and is serving a state prison sentence. Both of these defendants face the same maximum penalty under the current larceny statute (five years in state prison and a $25,000 fine) as a thief who steals a $250 car stereo.

The proposed legislation would categorize larcenies according to their dollar value and raise the penalties accordingly.

Status

This bill was filed by the Governor and was referred to the Joint Committee on Criminal Justice on March 25, 1992. The Senate non-concurred on May 27, 1992 and referred the bill to the Joint Committee on the Judiciary. The bill has not been given a final committee assignment and public hearings have yet to be scheduled.

C. **AN ACT TO ENHANCE CRIMINAL FINES IMPOSED BY THE COMMONWEALTH (HOUSE NO. 5359)**

Current Law

Currently, there is no uniform standard for criminal fines. The standards are outdated, inadequate and have become inconsistent as new legislation has been passed.

Proposed Change

This Act would increase the maximum fines for all criminal offenses to $50,000 for an individual convicted of a felony, and $10,000 for a misdemeanor; and $250,000 for an organization convicted of a felony and $50,000 for a misdemeanor.

Illustration of Need

Currently, the standards for imposing criminal fines in this Commonwealth are woefully outdated and inadequate. In addition, criminal fines have become inconsistent as new legislation has been passed. The use of fines as punishment for criminal offenses requires a more uniform standard which will enhance the deterrent aspect of the punishment and reflect the severity of the crime.

Status

This bill was filed by the Governor and was referred to the Joint Committee on Criminal Justice on March 25, 1992. The Senate non-concurred on May 27, 1992 and referred this bill to the Joint Committee on the Judiciary. The bill has not been given a final committee assignment and public hearings have yet to be scheduled.

THE COMMONWEALTH OF MASSACHUSETTS

September 21, 1992

The Honorable William M. Bulger
President of the Senate
Room 330, State House
Boston, Massachusetts 02133

The Honorable Charles Flaherty
Speaker of the House
Room 356, State House
Boston, MA 02133

Dear Mr. President and Mr. Speaker:

Today, more than ever, police, prosecutors, judges and others in the criminal justice system are on the front lines in the fight against violent street crime, drugs, family violence and the increasingly sophisticated incidence of organized and white collar crime.

In an unprecedented bipartisan effort, the Governor, Lieutenant Governor, Attorney General, the Massachusetts District Attorneys Association and the leadership of Massachusetts police have reached a consensus in support of thirteen criminal justice bills now pending before the Legislature. These bills, many of which have already received favorable reports from legislative committees, would fill gaps in the state's current criminal statutes -- statutes whose inadequacy often frustrates law enforcement, victims and the public. A report summarizing these proposals and discussing the pressing need for legislative action to protect the public safety is enclosed.

In the past year, the Legislature has demonstrated its responsiveness to pressing public safety concerns by passing important legislation such as juvenile justice reform, the stalking law, and a bill establishing a domestic violence registry. Working together, we also have increased funding for the Attorney General and District Attorneys, as well as provided funding for a new State Police class.

We are hopeful that, under your leadership, the Legislature will now work with us in support of passage of these thirteen important initiatives before the end of this legislative session.

Sincerely,

William F. Weld
Governor

Argeo Paul Cellucci
Lieutenant Governor

L. Scott Harshbarger
Attorney General

Paul F. Walsh, Jr., D.A.
President, Bristol County
Massachusetts District
Attorneys Association

Paul Doherty
Executive Director
Massachusetts Chiefs of
Police Association

cc: Senator Paul Harold
Representative Joseph McIntyre
Chairmen, Joint Committee on Criminal Justice

Senator Michael LoPresti, Jr.
Representative Salvatore DiMasi
Chairmen, Joint Committee on Judiciary

Senator James Jajuga
Representative Paul Caron
Chairmen, Joint Committee on Public Safety

ATTACHMENT 2

CHAPTER 90G.

CIVIL INFRACTIONS.

Section 1. The civil infraction procedures in this chapter may be used for the noncriminal disposition of the following violations:

(a) environmental violations under section six F of chapter twenty-one;

(b) municipal ordinance, by-law or regulatory violations under section twenty-one D of chapter forty;

(c) bicycle law violations under section eleven C of chapter eighty-five;

(d) pedestrian violations under section eighteen A of chapter ninety;

(e) motorboat violations under section fourteen of chapter ninety B;

(f) state park, forest recreation area and reservation violations under section seven A of chapter one hundred thirty-two A;

(g) dog control violations under section one hundred seventy-three A of chapter one hundred forty; and

(h) rubbish disposal violations under sections sixteen and sixteen A of chapter two hundred and seventy.

The civil infraction procedures in this chapter shall not be used for the enforcement of automobile law violations, as defined in section one of chapter ninety C. Chapter ninety C shall be the exclusive method of enforcement of such automobile law violations. The civil infraction procedures in this chapter shall not be used for the enforcement of a violation if criminal proceedings are being initiated against the violator for other violations arising from the same incident.

This chapter shall be construed and applied to secure the prompt and informal determination of such civil infractions.

Section 2. In this chapter, the following words shall have the following meanings:-

"Agency", any authority, board, commission, department, or division, or a subdivision of any of the foregoing, of the commonwealth, or any of its political subdivisions, but not including the legislative and judicial departments.

"Citation", a notice upon which an enforcing official shall record the occurrence of one or more civil infractions which are to be disposed of in ac-

cordance with the civil infraction procedures in this chapter. Each citation shall be numbered consecutively and shall be in such form and with such parts as determined jointly by the administrative justice of the district court department and the registrar. If a citation is spoiled, mutilated or voided, it shall be endorsed with a full explanation thereof by the enforcing official voiding such citation, and shall be returned to his agency head forthwith.

"Civil infraction", a violation of a criminal statute, ordinance, by-law, rule or regulation that is to be disposed of pursuant to the civil infraction procedure in this chapter.

"Criminal" shall include a delinquency matter under chapter one hundred and nineteen.

"Agency head", the commanding officer of an organized police department, or the head of an agency, or their designees.

"District court", a division of the district court department or a session thereof for holding court and the Boston municipal court department or a session thereof for holding court. It shall also include the divisions of the housing court department with respect to infractions that could be prosecuted as criminal matters in such department, and the divisions of the juvenile court department with respect to infractions that could be treated as delinquency matters in such department.

"Enforcing agency", the agency by which the enforcing official is employed.

"Enforcing official", a person taking cognizance of a violation listed in section one which that person is authorized by law to enforce.

"Magistrate", the clerk-magistrate of a district court, or an assistant clerk who has been designated as a magistrate pursuant to section sixty-two B of chapter two hundred and twenty-one. With the approval of the administrative justice of the department, in a particular court division the term "magistrate" may include a justice.

"Registrar", the registrar of motor vehicles.

"Scheduled assessment", the amount of the civil assessment for a particular civil infraction. The scheduled assessment shall be:

One thousand dollars for infractions of the second paragraph of section sixteen of chapter two hundred and seventy;

Two hundred dollars for infractions of sections forty-seven or seventy-five of chapter one hundred and thirty;

One hundred dollars for infractions of subparagraphs (b), (c) and (e) of section eight of chapter ninety B, sections thirty-five, thirty-seven, thirty-eight, thirty-eight A, forty-one, forty-one A, forty-four, sixty-seven, sixty-eight, eighty, ninety-two, one hundred A or one hundred C of chapter one hundred and thirty; sections fifty-eight, sixty-five, sixty-six, sixty-seven, seventy, seventy-five A, or eighty A of chapter one hundred and thirty-one; or infractions of section sixteen A of chapter two hundred and seventy if it is the fourth or subsequent such infraction committed in such city or town in that calendar year;

Fifty dollars for infractions of section four A of chapter twenty-one; the regulations promulgated pursuant to sections four A or seventeen A of chapter twenty-one; the rules and regulation of the division of fisheries and wildlife regulating activity on land under the management of such division; sections two, three, four, five, five A, six, seven, subsection (b) of section nine, sections nine A, twelve, twelve A or thirteen A, or the rules or regulations promulgated pursuant to sections two, five or five A of chapter ninety B; sections seventeen A, thirty-three, thirty-four, thirty-six, thirty-nine, forty, fifty-one, sixty-nine, seventy, seventy-one, seventy-two, eighty-one, eighty-two, ninety-five, or one hundred of chapter one hundred and thirty; sections one, five, six, eight, ten, eleven, thirteen, sixteen, nineteen A, twenty-three to twenty-five, inclusive, twenty-six, twenty-seven, twenty-eight, thirty, thirty-two, thirty-three, thirty-six, thirty-eight, forty-four, forty-seven, forty-nine to fifty-four, inclusive, fifty-seven, fifty-nine, sixty-nine, seventy-one, seventy-two, seventy-six, seventy-seven, seventy-nine, eighty, or eighty-two of chapter one hundred and thirty-one; the regulations promulgated pursuant to section seven of chapter one hundred thirty-two A; or an ordinance or by-law made under the authority of section one hundred seventy-three of chapter one hundred forty;

Twenty dollars for infractions of section eleven B of chapter eighty-five; or infractions of section sixteen A of chapter two hundred and seventy if it is the first, second or third such infraction committed in such city or town in that calendar year;

Two dollars for infractions of rules adopted pursuant to section eighteen A of chapter ninety if it is the fourth or subsequent such infraction committed within such city or town in that calendar year;

One dollar for infractions of section eleven A of chapter eighty-five, or

for infractions of rules adopted pursuant to section eighteen A of chapter ninety if it is the first, second or third such infraction committed within such city or town in that calendar year;

For an infraction of any municipal ordinance, by-law, rule or regulation, the amount fixed for such infraction by ordinance or by-law adopted pursuant to section twenty-one D of chapter forty, but not exceeding three hundred dollars;

For an infraction of any municipal ordinance, by-law, rule or regulation adopted pursuant to subsection (16B) of section twenty-one of chapter f rty and section eleven C of chapter eighty-five, the amount fixed for such infraction in such ordinance or by-law, but not exceeding twenty dollars;

For other civil infractions, the amount established jointly by the administrative justice of the district court department and the registrar for that infraction, but not exceeding the maximum fine, forfeiture, or civil assessment established by law for each such violation.

A schedule of such assessments shall be available in the clerk-magistrate's office of each district court and in each office of the registry of motor vehicles.

"Violator", a person, corporation, society, association or partnership accused of a civil infraction by means of a citation issued pursuant to this chapter.

Section 3. If an enforcing official observes or has brought to his attention the occurrence of a violation listed in section one, the enforcing official may choose to cite the violator pursuant to the civil infraction procedure in this chapter instead of initiating criminal proceedings, provided that the enforcing official shall be required to utilize the civil infraction procedure in this chapter instead of initiating criminal proceedings when so required by statute or by an ordinance, by-law, rule or regulation of the municipality or agency by which the enforcing official is employed.

The enforcing official may request the violator to state his name and address. Whoever, upon such request, refuses to state his name and address, or states a false name or address or a name or address which is not his name and address in ordinary use, shall be guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars, and such violator may be arrested without a warrant by any officer having police powers and the underlying violation prosecuted criminally.

Section 4. When the civil infraction procedure in this chapter is to be utilized instead of initiating criminal proceedings, the enforcing official shall issue a written citation notice to the violator, and shall certify on the citation that such has been done. If possible, such citation shall be delivered to the violator at the time and place of the violation, and the violator shall be requested to sign the citation in order to acknowledge that it has been received. If it is not possible to do so, the enforcing official, or his agency head, shall mail or deliver the citation to the violator's last known address.

At or before the completion of each tour of duty, the enforcing official shall retain his copy of all citations he has issued during such tour, and shall give all other copies of such citations to his agency head. The agency head shall retain and safely preserve at least one copy, and shall cause one copy to be mailed or delivered to the registrar not later than the end of the fourth business day after the date of the violation.

Section 5. The citation shall notify the violator that within twenty days of the date of the citation the violator must either pay the scheduled assessment for all civil infractions alleged, or contest responsibility for one or more of the infractions by requesting a noncriminal hearing before a magistrate of the district court.

Section 6. The violator shall pay the assessment indicated by the enforcing official within twenty days of the date of the citation: (a) by mailing the total amount of the indicated assessment, along with the citation appropriately marked, to the registrar at the address indicated on the citation, or (b) by delivering, personally or through an agent duly authorized in writing, the total amount of the indicated assessment, along with the citation appropriately marked, to any office of the registrar during normal business hours. Payment may be made in such forms, including payment by credit card or other recognized form of electronic payment, as the registrar shall determine.

Payment of the indicated assessment shall operate as a final disposition of the matter. The violator shall not be required to report to any probation officer, and no record of the matter shall be entered in any criminal or probation records of any court.

Section 7. A violator may contest responsibility for one or more infractions by making a signed request for a noncriminal hearing on the back of the citation, and mailing such citation to the registrar at the address indicated

on the citation within twenty days of the date of the citation.

A violator who does not, within twenty days of the date of the citation, request a noncriminal hearing shall not thereafter be given such a hearing, unless the registrar shall determine that the failure to make such a request in a timely manner was for good cause that was not within the control of the violator. The registrar's determination of such issue shall be final.

The registrar shall notify the clerk-magistrate of the district court for the judicial district in which the infraction occurred of such request for a noncriminal hearing, in such manner as the administrative justice of the district court department and the registrar shall jointly determine. Unless a hearing date and time has already been assigned pursuant to procedures jointly established by the administrative justice of the district court department and the registrar, the clerk-magistrate shall notify the enforcing agency and the violator of the date and time of the hearing before a magistrate of the court.

If the hearing is conducted by a magistrate other than a justice, either the violator or the enforcing agency may appeal the decision of the magistrate to a justice, who shall hear the matter de novo. There shall be no right of jury trial for civil infractions.

In any such hearing before a magistrate or justice, the citation shall be admissible and shall be prima facie evidence of the facts stated therein. Compulsory process for witnesses may be had by either party in the same manner as in criminal cases. On a showing of need in advance of such hearing, a magistrate or justice may direct that the violator be permitted to inspect specific written documents or materials in the possession of the enforcing official or agency concerned that are essential to the violator's defense.

In any such hearing, a delay by the enforcing official or agency in delivering a copy of the citation to the violator shall not constitute a defense to such infraction unless the violator has thereby been prejudiced in his defense. A written certification, whether as part of the citation or in a separate certificate, by the enforcing official, or by his agency head, that the citation was given, delivered or mailed to the violator shall be prima facie evidence of receipt thereof.

At the conclusion of the hearing, the magistrate or justice shall announce a finding of responsible or not responsible. No other disposition shall be permitted, and such matters shall not be continued without a finding, dismissed, or filed.

If the violator is found responsible after a noncriminal hearing, the magistrate or justice shall require the violator to pay to the registrar an assessment which shall not exceed the scheduled assessment for that infraction. Such assessment shall be in accordance with any guidelines promulgated by the administrative justice of that department of the trial court, which shall be binding on magistrates and justices, to the end that such assessments are made as uniformly as possible, and which may include provisions requiring a prescribed or a minimum assessment for specified civil infractions.

The violator shall pay to the registrar the assessment imposed by the magistrate or justice within twenty days of the date the violator is personally notified or is mailed notice of the decision of the magistrate or justice, unless for good cause the magistrate or justice allows the violator a longer time to pay the imposed assessment.

Section 8. Questions of law arising in the disposition of a civil infraction in a noncriminal hearing before a justice may be appealed to the appellate division. Such appeals shall be governed by a simplified method of appeal established by rules promulgated by the administrative justice of the district court department, subject to the approval of the supreme judicial court. Claims of appeal shall be accompanied by an entry fee in an amount established by the chief administrative justice of the trial court. Proceedings under this chapter shall not be reviewable by a civil action in the nature of certiorari.

Section 9. (a) If a violator (i) fails either to pay the full amount of the scheduled assessment to the registrar or to request a noncriminal hearing within twenty days of the date of the citation plus such grace period as the registrar shall allow, or (ii) fails to appear for a noncriminal hearing before a magistrate or a justice at the time required after having been given notice of such hearing either personally or by first class mail directed to such violator's mail address as reported to the registrar by the violator, the registrar shall notify the violator by first class mail directed to such violator's mail address that unless and until the violator pays to the registrar the full amount of the scheduled or imposed assessments for such civil infractions, plus any late fees or other administrative fees provided for by law or regulation, any license to operate a motor vehicle issued to such violator by the registrar will not be renewed upon or after the expiration date of such license. Unless such notice is sooner canceled by the registrar, the

registrar is hereby authorized not to renew the license learner's permit or other right to operate a motor vehicle of such violator.

(b) If a violator attempts to pay a scheduled assessment with a check that is returned unpaid, or fails to pay the full amount of an assessment imposed by a magistrate or justice pursuant to this section within the time allowed plus such grace period as the registrar shall allow, such violator may not apply for or receive any license, learners permit, or right to operate a motor vehicle, any certificate of registration or title, number plate, sticker, decal or other item issued by the registrar until such amount has been paid in full, plus any late fees or other administrative fees which the registrar is required or authorized by law or regulation to impose, unless such fees are waived in whole or in part by the registrar.

(c) Payment of a scheduled assessment or an assessment imposed by a magistrate or justice pursuant to section eight, plus any late fees or other administrative fees provided for by law or regulation, shall operate as a final disposition of the matter. The violator shall not be required to report to any probation officer, and no record of the matter shall be entered in any criminal or probation records of any court.

(d) If the registrar at any time determines for one or more particular citations that the procedures prescribed in paragraphs (a) and (b) of this section appear to be unlikely to result in full payment of the civil assessment and any fees due, the registrar shall so certify to the enforcing agency, which may then prosecute such violations criminally. In such cases, the administrative justice of the department may permit the citation to serve, in whole or in part, as an application for criminal complaint. The enforcing official may sign the criminal complaint as complainant, or his agency head may, from time to time, designate one person to sign all such complaints. Section thirty-five A of chapter two hundred eighteen shall not apply to such complaints. Thereafter, the procedure established for criminal cases shall be followed. In such cases, the registrar may in his discretion cancel any suspension or revocation of the violator's license, learners permit, or right to operate a motor vehicle, as well as any certificate of registration or title, number plate, sticker, decal or other item issued by the registrar and held by the violator.

Section 10. Any funds collected by the registrar pursuant to this chapter shall be distributed monthly in accordance with law.

Section 11. A violator who, pursuant to this chapter, has paid the required civil assessment plus any late fees, or has been found not responsible by a magistrate or justice, shall not thereafter be prosecuted criminally for the same violation.

Section 12. A violator's payment of a civil assessment pursuant to this chapter shall not be admissible as an admission of guilt, responsibility or negligence in any criminal or civil proceeding.

Section 13. If an enforcing official observes or has brought to his attention the occurrence of a violation listed in section one, but is unable to determine the name or the address of the violator, the enforcing official may, if the violation involved the use of a motor vehicle or motor boat, issue a citation pursuant to the civil infraction procedure in this chapter to the registrant of the motor vehicle or motor boat involved, as appearing in the records of the registry of motor vehicles or the division of law enforcement of the department of fisheries, wildlife and environmental law enforcement, or equivalent agency, of the state or country of its registration, and the issuance of such citation to the registrant shall be deemed a sufficient notice to the alleged violator. Proof of such registration shall be prima facie evidence that the registrant was the alleged violator, but shall be subject to rebuttal by evidence that such registrant was not the alleged violator.

Chapter 188 ATTACHMENT 3

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-two

AN ACT ESTABLISHING A STATEWIDE REGISTRATION OF DOMESTIC VIOLENCE OFFENSES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately provide for the statewide registration of domestic violence offenses, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 208 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting after section 34C the following section:-

Section 34D. Upon the filing of a request for a restraining order pursuant to section eighteen or for an order for a spouse to vacate the marital home pursuant to section thirty-four B, a petitioner shall be informed that the proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a petitioner shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and such petitioner shall be instructed by such district attorney's office relative to the procedures required to initiate such criminal proceedings including, but not limited to, the filing of a complaint for a violation of section forty-three of chapter two hundred and sixty-five. Whenever possible, a petitioner shall be provided with such information in the petitioner's native language.

When considering a request for a restraining order pursuant to section eighteen or for an order for a spouse to vacate the marital home pursuant to section thirty-four B, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that

an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

SECTION 2. Section 32 of chapter 209 of the General Laws, as so appearing, is hereby amended by inserting after the first paragraph the following two paragraphs:-

Upon the filing of a complaint pursuant to this section to prohibit a spouse from imposing any restraint upon the complainant's personal liberty, a complainant shall be informed that proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a complainant shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and shall be instructed by such district attorney's office relative to the procedures required to initiate criminal proceedings including, but not limited to, the filing of a complaint for a violation of section forty-three of chapter two hundred and sixty-five. Whenever possible, a complainant shall be provided with such information in the complainant's native language.

When considering a complaint to prohibit a spouse from imposing any restraint upon the complainant's personal liberty under this section, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent

threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

SECTION 3. Chapter 209A of the General Laws is hereby amended by inserting after section 3 the following section:-

Section 3A. Upon the filing of a complaint under this chapter, a complainant shall be informed that the proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a complainant shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and such complainant shall be instructed by such district attorney's office relative to the procedures required to initiate criminal proceedings including, but not limited to, a complaint for a violation of section forty-three of chapter two hundred and sixty-five. Whenever possible, a complainant shall be provided with such information in the complainant's native language.

SECTION 4. Section 7 of said chapter 209A, as appearing in the 1990 Official Edition, is hereby amended by inserting before the first paragraph the following paragraph:-

When considering a complaint filed under this chapter, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

SECTION 5. Section 15 of chapter 209C of the General Laws, as so appearing, is hereby amended by adding the following two paragraphs:-

Upon the filing of a request for an order to protect a party or a child under the provisions of the first paragraph of this section, a petitioner shall be informed that proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a petitioner shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and such petitioner shall be instructed by such district attorney's office relative to the procedures required to initiate criminal proceedings including, but not limited to, a complaint for a violation of section forty-three of chapter two hundred and sixty-five. Whenever possible, a petitioner shall be provided with such information in the petitioner's native language.

When considering a request for relief pursuant to this section, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

SECTION 6. The second paragraph of section 35A of chapter 218 of the General Laws, as so appearing, is hereby amended by inserting after the first sentence the following sentence:- The court or other officer referred to in the preceding paragraph shall consider the named defendant's criminal record and the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation in determining whether an imminent threat of bodily injury exists.

SECTION 7. The commissioner of probation is hereby authorized and directed to develop and implement a statewide domestic violence record keeping system not later than September thirtieth, nineteen hundred and ninety-two. Said system shall include a computerized record of the issuance of or violations of any protective orders or restraining orders issued pursuant to sections eighteen and thirty-four B of chapter two hundred and eight of the General Laws, section thirty-two of chapter two hundred and nine of the General Laws, civil restraining orders or protective orders issued pursuant to chapter two hundred and nine A of the General Laws or any violations of said chapter two hundred and nine A, or sections fifteen and twenty of chapter two hundred and nine C of the General Laws. Further, said computerized system shall include the information contained in the court activity record information system maintained by the office of said commissioner. The information contained in said system shall be made available to judges considering petitions or complaints pursuant to said sections eighteen and thirty-four B of said chapter two hundred and eight, said section thirty-two of said chapter two hundred and nine, said chapter two hundred and nine A and said sections fifteen and twenty of said chapter two hundred and nine C. Further, the information contained in said system shall be made available to law enforcement agencies through the criminal justice information system maintained by the executive office of public safety. Said commissioner shall make a written report to the joint committee on the judiciary regarding implementation of said record keeping system no later than October ninth, nineteen hundred and ninety-two.

SECTION 8. Until such time as the office of the commissioner of probation has completed the preparation of a statewide domestic violence record keeping system, pursuant to section seven, a judge, upon considering a request for relief pursuant to section eighteen or thirty-four B of chapter two hundred and eight of the General Laws or a complaint under section thirty-two of chapter two hundred and nine of the General Laws or a complaint under chapter two hundred and nine A of the General Laws or a request for relief pursuant to section fifteen or twenty of chapter two hundred and nine C of the General Laws, shall review the named defendant's history of violence using available and accessible records.

House of Representatives, September 3, 1992.

Preamble adopted, Thomas J. Finneran, Speaker.

In Senate, September 8, 1992.

Preamble adopted, William M. Bulger, President.

House of Representatives, September 8, 1992.

Bill passed to be enacted, Charles Flaherty, Speaker.

In Senate, September 8, 1992.

Bill passed to be enacted, William M. Bulger, President.

18 September, 1992.

Approved,

at two o'clock and 58 minutes, P. M.

William F. Weld

Governor.

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

Section-by-Section Analysis of House 6017: An Act Establishing Statewide Registration of Domestic Violence Offenses (Barrett Bill)

by

Betty Eng, Assistant Attorney General
Jane E. Tewksbury, Assistant Attorney General

September 23, 1992

Section 1: (Chapter 208):

a. Adds new section 34D to Chapter 208 (Divorce).

b. Section 34D would require the court to advise the petitioner that although proceedings under M.G.L. c.208 §§18, 343 are civil in nature, violations of orders are criminal violations.

c. Additionally, the court would be required to provide the petitioner with information prepared by the appropriate district attorney's office about additional criminal remedies.

d. The District Attorney's Office would be required to provide information to the petitioner about how to seek a criminal complaint including, but not limited to, a complaint for a violation of M.G.L. c. 265, §43 (the "stalker" law).

e. Finally, Section 34D would require that the above information be provided in the petitioners native language, whenever possible.

f. Section 34D would require the judge to access the "domestic violence registry" of the Office of the Commissioner of Probation to determine whether the defendant has a civil or criminal record involving domestic or other violence.

g. If a search of the records indicates that an outstanding warrant exists against the defendant, the judge must order that the appropriate law enforcement officials be notified and that any information regarding the defendant's last known whereabouts be forwarded.

h. Where an outstanding warrant exists, the judge must determine whether "an imminent threat of bodily injury exists to the petitioner or the public".

i. Where such a threat exists, the judge must notify the appropriate law enforcement officials of of the threat. The law enforcement officials must then take "all necessary actions to execute any outstanding warrants as soon as is practicable".

Section 2 (Chapter 209):

Adds the foregoing amendments to amend M.G.L. c. 209 §32 (Husband and Wife)

Section 3 (Chapter 209A):

a. Adds amendments (b - e) as described in Section 1 above to M.G.L. c. 209A by adding Section 3A after §3. (Remedies; Period of Relief)

Section 4 (Chapter 209A):

a. Adds amendments (f - i) as described in Section 1 above to, M.G.L. c. 209A, §7 (Service and Enforcement of Orders).

Section 5 (Chapter 209C)

a. Adds all of the amendments described in Section 1 above to M.G.L. c. 209C, §15 (Children Born out of Wedlock: Temporary Orders; Enforcement)

Section 6 (Chapter 218):

a. Amends M.G.L. c. 218, §35 (District Courts: Process; issuance of complaint for misdemeanors; condition precedent) by adding language requiring the Court, the District Attorneys and law enforcement officials to consider the defendant's criminal record and the applicable "domestic violence registry" records in determining whether there is an imminent threat of bodily injury.

Section 7

a. The Office of the Commissioner of Probation is authorized and directed to develop and implement a statewide domestic violence record keeping system no later than September 30, 1992.

b. Restraining orders issued under the following chapters and violations of the same would be input into the system:

M.G.L. c. 209A (restraining order to prevent abuse).

M.G.L. c. 208, § 18 (protective order/restraining order to prevent divorcing spouses from prohibiting each other's liberty -- and to protect the children).

M.G.L. c. 208, §34B (vacate order requiring spouse to vacate the marital home).

M.G.L. c. 209, §32 (civil restraining order prohibiting restraints on personal liberty of a spouse).

M.G.L. c. 209C, §15 (orders to protect the children, e.g. custody).

M.G.L. c. 209C, §20 (modification orders).

NOTE: Orders obtained in the Superior Court through a petition in equity are not covered.

c. The computerized system shall also include information contained in the Court Activity Record Information System (CARI) maintained by the Commissioner of Probation.

d. The information contained in the system shall be made available to judges considering petitions or complaints pursuant to:

M.G.L. c. 208, §§18, 34B;

M.G.L. c. 209, §32;

M.G.L. c. 209A;

M.G.L. c. 209C, §§15, 20.

NOTE: Orders obtained in the Superior Court through a petition in equity are not covered.

e. Furthermore, the information contained in the system shall be made available to law enforcement agencies through CJIS.

f. The Office of the Commissioner of Probation must make a written report to the Joint Committee on the Judiciary regarding its implementation of the system no later than October 9, 1992.

Section 8:

a. Until the statewide domestic violence record keeping system is operational, a judge who is considering a request for relief or complaint filed under:

M.G.L. c. 208, §§18, 34B;

M.G.L. c. 209, §32;

M.G.L. c. 209A; or

M.G.L. c. 209C, §§15, 20

"shall make every effort to review the named defendant's history of violence using available and accessible records."

NOTE: Orders obtained in the Superior Court through a petition in equity are not covered.

9772A

ATTACHMENT 4

SENATE . . . . . No. 753

By Mr. Jajuga, a petition (accompanied by bill, Senate, No. 753) of James P. Jajuga, the Massachusetts Chiefs of Police Association, by Paul L. Doherty, executive director, Thomas G. Palumbo, Charles E. Shannon, Brian S. Dempsey, Larry F. Giordano, James M. Barry and Paul E. Caron for legislation to further protect victims of domestic abuse. The Judiciary. March 25 - 2:00 P.M. - Room 222

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT AMENDING CHAPTER 209A TO FURTHER PROTECT VICTIMS OF DOMESTIC ABUSE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 209A is hereby amended by inserting immediately following paragraph (i) the following new paragraph: —

(j) ordering the police to search for, take possession of and remove to the police station or some other suitable place for storage, any weapon(s), handgun(s), or firearm(s) located on the premises where domestic violence has occurred or is or was in danger of occurring. The court shall give the owner of the weapon(s), handgun(s) or firearm(s) an opportunity to be heard on the question of continuing the order of confiscation within fourteen (14) days of the issuance of such order if said order was issued on an emergency basis pursuant to the provisions of section 5 of Chapter 209A.

Notwithstanding the provisions of any general or special law to the contrary, a police chief or other licensing authority may revoke any Firearms Identification Card and/or License to Carry issued pursuant to sections one hundred and forty, one hundred and twenty-nine B, and/or one hundred and thirty-one, respectively, of Chapter 140 of the General Laws, and any police officers responsing to the scene of a domestic abuse incident may search the premises, take custody of and remove to the police

station or some other suitable place for storage until further order of a court, a weapon, handgun or firearm, whenever there is probable cause to believe that a weapon, handgun or firearm was used or threatened to be used in connection with a domestic abuse offense.

SENATE . . . . . No. 825

By Mr. LoPresti, a petition (accompanied by bill, Senate, No. 825) of Michael LoPresti, Jr., Mary C. Fitzpatrick, Edward P. Kirby and David H. Locke for legislation to improve the administration of the abuse protection law. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT IMPROVING ADMINISTRATION OF THE ABUSE PREVENTION LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 5 of Chapter 209A of the General Laws as most recently amended Chapter 403 of the Acts of 1990 is further amended by striking the first sentence and inserting in place thereof the following sentence: —

When the court is closed for business, any justice of the superior, probate and family, district or Boston municipal courts or a clerk magistrate, assistant clerk magistrate, register or assistant register of any of those court departments may grant relief to the plaintiff as provided under section four if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse. Should the clerk or the register fail to grant the application for relief, the application may be presented to a justice of the trial court.

SENATE . . . . . No. 842

By Ms. Melconian, a petition (accompanied by bill, Senate, No. 842) of Linda J. Melconian for legislation relative to emergency restraining orders. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT RELATIVE TO EMERGENCY RESTRAINING ORDERS

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 209A of the General Laws, as most recently amended by Chapter 403 of the Acts of 1990 is hereby further amended by adding the following paragraph at the end of Section 5:

"Notwithstanding the foregoing, the on-call justice from the Judicial Response System shall not be telephoned for an emergency restraining order when the defendant is under arrest, and the police department shall not release such defendant from custody on bail without first serving such defendant with a notice containing the following language in conspicuous type: 'Pursuant to Massachusetts General Laws Chapter 209A, an Emergency Restraining Order is in force against you, and you are ordered to refrain from abusing the complainant, to stay away from the complainant's residence, and to have no contact with said complainant. This Emergency Restraining Order will be reviewed at (insert date and time of next court date) at the (insert name and address of court) and your failure to appear may result in the restraining order being placed in force for a period of one year."

INTERNAL AFFAIRS INVESTIGATIONS

INTERNAL AFFAIRS INVESTIGATIONS AFTER CARNEY v. SPRINGFIELD

I. Understanding the Carney Decision

II. Extent of Privilege Against Self-Incrimination in Public Employee Context: What is Compulsion?

- Commonwealth v. Harvey
- Commonwealth v. Sasu

III. Discussion of Issues Left Unresolved by Carney

- Non-criminal Investigations
- Discipline other than Dismissal
- Police "Immunity"
- Collective Bargaining

IV. Guidelines and Suggestions for Avoiding Carney Litigation

REPRINTED COURTESY OF MIDDLESEX COUNTY
DISTRICT ATTORNEY THOMAS F. REILLY

Prepared by: Catherine E. Sullivan
Assistant District Attorney

INTERNAL AFFAIRS INVESTIGATIONS

RECOMMENDED GUIDELINES UNDER CARNEY V. CITY OF SPRINGFIELD

1. Police departments should conduct a training for all supervisory personnel concerning the Carney decision, so as to familiarize them with the case and its holdings. A description of the case, entitled "Summary of Carney v. City of Springfield, 403 Mass. 604 (1988)" is attached as Sample Form A.

> NOTE: Supervisory officers should be familiar with Carney so that they can evaluate the legitimacy of an officer's refusal to answer a question or file a report, and refer the matter to internal affairs if an officer claims his privilege against self-incrimination. If a supervisory officer does not honor an officer's claim of the privilege and forces the officer to incriminate himself, there may be a violation of the officer's rights, with possibly serious consequences.

2. Supervisory officers should be directed to honor all claims of the privilege against self-incrimination made by officers under their command. If there is a question as to whether a claim of the privilege is valid, the matter should be referred to the internal affairs officer or unit. If an officer refuses to answer a question by a superior officer without stating the basis

for his refusal, the superior officer should ascertain, either from the circumstances or by questioning the officer, whether the refusal is based on an exercise of the privilege.

3. Before any questions are asked during internal investigations, internal affairs officers should consider specifically informing the officer or employee under investigation that he has the right to claim his privilege against self-incrimination, that he will not be subject to discipline if he exercises his privilege, but that discipline may nevertheless be imposed based on other information. Internal affairs officers should also consider informing the subject that his answers may be used in administrative or criminal proceedings against him. If such advice is given, it is recommended that a form be completed and read to the officer or employee, such as the attached form entitled Administrative Interview Form (Sample Form B), prior to questioning.

> NOTE: The courts have not addressed whether such warnings are required in internal investigations under the decision in Carney. Specifically advising the officer or employee of these rights, however, will be useful later to prove that a statement was given voluntarily and to help protect the department from claims that an answer was compelled in violation of Carney.

4. If the department intends to discipline the officer or employee for refusing to answer questions (permitted only in the unusual case where refusal is based on a reason other than the privilege against self-incrim-

ination), the officer or employee must be informed, before any questions are asked, of the exact form of discipline that will be imposed for refusal.

5. Questions asked during internal affairs investigations must relate narrowly and specifically to the officer or employee's performance of his official duties or to his fitness to do so.

> NOTE: Improper off-duty conduct may be the subject of questioning where it relates to an officer's fitness to perform his official duties. General or vague questions that are not related to the incident under investigation, however, are not permitted.

6. If an officer or employee claims his privilege against self-incrimination and refuses to answer questions during an internal affairs investigation, his claim should be honored. No disciplinary action may be taken based on his exercise of the privilege. He may, however, be disciplined based on other evidence of wrongdoing, in accordance with the department's procedures.

> NOTE: Claims of the privilege should generally be honored because the standard is broad: any information that could possibly tend to incriminate the officer or employee is protected. Even noncriminal allegations such as tardiness may be related to other criminal conduct. If there is independent information to support disciplinary action, there may be no need for the officer or employee's own responses. If the department believes a claim of the privilege is invalid and wishes to impose discipline for a refusal to answer questions, it is recommended that counsel be consulted to ensure that there is no violation of the officer's or employee's rights.

7. An officer or employee is entitled to make a voluntary statement, even if his statement could tend to incriminate him. If the officer or employee chooses to answer questions, his voluntary answers may be used in the internal affairs investigation and, if criminal charges are brought, his answers may also be admissible in the criminal proceedings.

8. If a police department conducting an internal affairs investigation believes that a promise of nonprosecution is necessary to uncover important information, it should contact the District Attorney. He will consider whether, under all the circumstances, a promise of nonprosecution is appropriate and, if so, issue a nonprosecution letter. In rare cases, the District Attorney may determine that a formal grant of immunity should be sought in connection with grand jury proceedings.

9. No promises concerning nonprosecution or immunity shall be made by police officials, officers, or any other persons without the express authorization of the District Attorney.

10. If an officer or employee has been promised by the District Attorney that he will not be prosecuted for any offenses relating to the matters about which he is questioned, he may be required to answer questions that are narrowly related to his ability and fitness to perform his official duties if he is informed of the exact form of

discipline that will be imposed if he refuses to answer. It is recommended that a form be used such as that attached entitled Interview Form for Officer Promised Nonprosecution (Sample Form C).

11. If at any time during an internal affairs investigation it appears that a police officer or employee has been involved in criminal activity, the matter should be referred to the District Attorney. Once it is learned that the matter is criminal, it is recommended that Miranda warnings be given before any further questions are asked the officer or employee. At that point, the matter should be treated as a criminal investigation and the officer or employee should be so informed.

SAMPLE FORM A

SUMMARY OF CARNEY V. CITY OF SPRINGFIELD,
403 MASS. 604 (1988)

This Police Department has recently reviewed its rules and procedures to ensure compliance with the decision in Carney v. City of Springfield, 403 Mass. 604 (1988). The following is a summary of the Carney case.

In Carney, the Supreme Judicial Court held that a police officer (or other public employee) has the same privilege against self-incrimination as any other citizen. Under article 12 of the Massachusetts Declaration of Rights, no person may be compelled by the government to provide information that could tend to incriminate him unless he is granted transactional immunity. If a witness is granted transactional immunity, he cannot be prosecuted for any offense to which his answers relate.

All members and employees of this Police Department are required to answer questions put forth to them by a superior officer and to file all appropriate reports regarding their official duties. If an officer or employee reasonably believes such information could tend to incriminate him, however, he is entitled to exercise his privilege against self-incrimination. If he refuses to provide information based on his privilege against self-incrimination, he may not be subject to disciplinary action as a result of his refusal. Disciplinary action may nevertheless be taken against him based on other information received by the department.

If an officer or employee receives a promise from the District Attorney not to prosecute him for any offenses relating to the matters about which he is being questioned, then he may not refuse to provide information even if he reasonably believes his answers could incriminate him. Any promise regarding nonprosecution or immunity must be made by the District Attorney or with his express authorization. If an officer or employee has received such a promise from the District Attorney, his refusal to provide information relating to his official duties may subject him to disciplinary action by the department. In such a case, he must be told the exact form of discipline that will result from his refusal to answer questions.

SAMPLE FORM B

_____ POLICE DEPARTMENT
INTERNAL AFFAIRS UNIT
ADMINISTRATIVE INTERVIEW FORM

CASE:

DATE:

TIME:

At this time Officer _____, I hereby inform you that you are being questioned as a subject of an official investigation of this Police Department. This is being conducted by the Internal Affairs Unit at the direct command of the Chief of Police. You will be asked specific questions concerning the allegations made against you as a member of the department. The purpose of this interview is to elicit responses that will assist the department in determining whether disciplinary action is warranted, and the answers furnished may be used in disciplinary proceedings that could result in administrative action against you, including dismissal.

You may refuse to answer any question if you reasonably believe your answer could be used against you in a criminal prosecution or could lead to other evidence that might be so used. If you refuse to answer based on your privilege against self-incrimination, your refusal to answer will not subject you to any disciplinary action by the Police Department. Disciplinary action may nevertheless be taken against you based on other information received by the department. If you waive your privilege against self-incrimination and choose to answer questions voluntarily, your answers could be used against you in a criminal proceeding.

Do you understand what I have read to you?

SAMPLE FORM C

_____ POLICE DEPARTMENT
INTERNAL AFFAIRS UNIT
INTERVIEW FORM -- OFFICER PROMISED NONPROSECUTION

CASE:

DATE:

TIME:

At this time Officer _____, I hereby inform you that you are being questioned as a subject of an official investigation of this Police Department. This is being conducted by the Internal Affairs Unit at the direct command of the Chief of Police. You will be asked specific questions concerning the allegations made against you as a member of the department. The purpose of this interview is to elicit responses that will assist the department in determining whether disciplinary action is warranted, and the answers furnished may be used in disciplinary proceedings that could result in administrative action against you, including dismissal.

If you refuse to answer any question which relates directly, narrowly, and specifically to the performance of your official duties as a police officer, you will be subject to _____ (suspension, discharge, or the exact other form of appropriate discipline).

You are required to answer even if you reasonably believe your answer could tend to incriminate you because you have received a promise from the District Attorney, by Assistant District Attorney _____, that you will not be prosecuted for any offenses relating to the allegations about which you are being questioned.

Do you understand what I have read to you?

MICHAEL P. CARNEY *vs.* CITY OF SPRINGFIELD & others[1]

Hampden. September 14, 1988. — December 19, 1988.

Present: WILKINS, ABRAMS, NOLAN, & LYNCH, JJ.

Administrative Law, Exhaustion of remedies. *Civil Service*, Termination of employment, Judicial review. *Constitutional Law*, Public employment, Self-incrimination. *Public Employment*, Police, Termination. *Witness*, Immunity. *Police*, Discharge.

Statement of the standard of review applicable to a civil action for relief in the nature of certiorari. [605]

A city police officer, who had been called for questioning in a departmental investigation regarding his fitness to perform his duties, could not lawfully be discharged for invoking his Federal constitutional privilege against self-incrimination where, in a proceeding for judicial review of the officer's discharge, the record did not demonstrate that he had been advised of the precise consequences of his invoking the privilege but, instead, indicated merely that he had been given a general warning by a deputy chief of police that failure to answer the questions put to him might subject him to unspecified "departmental disciplinary proceedings." [608-610]

On appeal from summary judgment in an action for relief in the nature of certiorari commenced by a city police officer who had been discharged for invoking his State constitutional privilege against self-incrimination during an internal departmental investigation, this court concluded that a decision of the Civil Service Commission upholding the discharge could not stand, where the record did not demonstrate that the officer had been accorded transactional immunity with respect to the answers sought from him. [610-611]

CIVIL ACTION commenced in the Superior Court Department on April 17, 1986.

The case was heard by *John F. Murphy, Jr.*, J., on a motion for summary judgment.

[1] Civil Service Commission; the Springfield Division of the District Court Department is named as a nominal party.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

The case was submitted on briefs.

Kevin B. Coyle for the plaintiff.

Richard T. Egan, City Solicitor, for the city of Springfield.

James M. Shannon, Attorney General, & *Lisa A. Levy*, Assistant Attorney General, for Civil Service Commission.

NOLAN, J. The plaintiff, Michael P. Carney, appeals from a Superior Court judgment entered following allowance of a motion for summary judgment filed by the city of Springfield. The test whether a motion for summary judgment should be allowed is twofold: (1) whether after consideration of the pleadings, depositions, answers to interrogatories, and affidavits, a genuine issue of material fact exists; and (2) whether the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56 (c), 365 Mass. 824 (1974). The Superior Court judge, in this action in the nature of certiorari, as provided by G. L. c. 249, § 4 (1986 ed.), affirmed a District Court judge's decision. The judgment in the District Court upheld the Civil Service Commission's approval of the board of police commissioners' successive votes to suspend Carney on two occasions and then to discharge him from the Springfield police department. Carney appealed. We transferred the case to this court on our own motion. We now reverse.

1. *Standard of review.* An action under G. L. c. 249, § 4, lies only where the petitioner has exhausted all administrative remedies. *Reidy* v. *Acting Director of Civil Serv.*, 354 Mass. 760 (1968). A court will correct only a substantial error of law, evidenced by the record, which adversely affects a material right of the plaintiff. *Murray* v. *Second Dist. Court of E. Middlesex*, 389 Mass. 508, 511 (1983). In its review, the court may rectify only those errors of law "which have resulted in manifest injustice to the plaintiff or which have adversely affected the real interests of the general public." *Id.* Our review, then, is to determine whether the Superior Court correctly determined that the record before the District Court showed no error of law in the commission's decision which adversely affected one of Carney's material rights. *Id.*

2. *The facts*. In June of 1984, the police department began investigating alleged violations of narcotics laws by members of the department.[2] Several officers were ordered to report to the department's Internal Investigation Unit (I.I.U.) regarding their fitness to perform their duties as police officers. Three department officers sought to enjoin the department from compelling them to report.[3] The Superior Court issued a declaration of rights but denied the officers' request for injunctive relief.[4]

On August 8, 1984, Carney was ordered to report to the I.I.U. for questioning regarding his fitness to perform his official duties. The order made clear that the questioning concerned an ongoing criminal investigation which would "continue until the termination, by trial or otherwise, of such indictments as are presently pending." Carney was provided with a set of detailed questions addressing the purchase, sale, and use of controlled substances by certain Springfield police officers.

Deputy Chief of Police Robert Flanagan read Carney the Miranda warnings, including a warning that anything he said could be used against him in court. Carney refused to waive his right to remain silent, claiming rights under the Massachusetts and United States Constitutions. Flanagan then "acknowledged" that Carney had not waived his right to remain silent but ordered Carney to respond under threat of "departmental disciplinary proceedings." Carney twice indicated that he did not understand and asked Flanagan for clarification regarding the type of "proceedings" to which he would be subject. Flanagan merely repeated that he would be subject to departmental discipline. When Flanagan asked Carney for the third time if he understood, Carney responded, "Yes I do, whatever they might be. I don't know." Carney's attorney then objected to the questioning. Carney again asserted all the constitutional rights he might have, and refused to answer the questions. The interrogation concluded shortly thereafter.

The chief of police, Paul Fenton, suspended Carney that same day for refusing to answer the questions. Although Carney appealed his suspension and received a hearing on August 13, 1984, the appointing authority, the board of police commissioners, upheld it. He appealed.

Carney was again ordered to report to the I.I.U. for questioning. He appeared on August 16, 1984, was again given Miranda warnings, and told that anything he said could be used against him in court. Carney again declined to waive his constitutional rights but stated that he would answer some questions. Flanagan, the questioning officer, then acknowledged Carney's refusal to waive his rights and informed Carney that if he did not answer the questions regarding his fitness to perform his official duties that he would be subject to "departmental disciplinary proceedings."

At this point during the questioning, a discussion ensued between the city solicitor and Carney's attorney about whether the answers to the questions could be used against Carney in court. Carney's attorney inquired what efforts had been made to obtain immunity for Carney.[5] On advice of counsel, Carney

[2] The record reflects that department officials were pursuing both a criminal investigation and an administrative investigation simultaneously.

[3] See *Doe* v. *Springfield*, post 1010. Officer Carney was not a party to that action.

[4] See *Springfield* v. *Civil Serv. Comm'n*, post 612. One of those officers, John Lynch, was ordered to report for questioning, refused, and was suspended for five days. He was again ordered to report, again refused to do so, and again was suspended for five days. Subsequently, he was discharged from his position.

[5] Part of the confusion regarding the use of Carney's statements in a subsequent criminal proceeding arises out of the word "immunity." The Superior Court's declaratory judgment in *Doe* v. *Springfield*, *post* at 1010 states that "[a]bsent a valid granted immunity, the officers may exercise their constitutional rights and refuse to answer questions." In Massachusetts, a grant of immunity may be obtained for grand jury proceedings only from a single justice of the Supreme Judicial Court. See G. L. c. 233, §§ 20C - 20I (1986 ed.). We have previously held, however, that where a defendant relies on the promise made by an assistant district attorney, the court will enforce the promise because the sovereign must adhere to the highest degree of ethics. See *Commonwealth* v. *Benton*, 356 Mass. 447, 448-449 (1969). Informal "immunity" under the Fifth Amendment to the United States Constitution can also arise where public employees are compelled to answer questions narrowly and specifically related to their job performance. See, e.g., *Garrity* v. *New Jersey*, 385 U.S. 493 (1967). Although not under the umbrella of statutory immunity, such statements are inadmissible in a subsequent criminal proceeding because they result from compelled testimony

refused to answer any further questions and was again suspended for a five-day period. He appealed the suspension.

On August 20, 1984, Carney received notice of disciplinary charges and, after a hearing on August 24, 1984, before the board of police commissioners, Carney was discharged as a police officer for insubordination, neglect, disobedience of orders, and an act contrary to the good order and discipline of the department.

Carney then appealed the decision to the commission, as provided by G. L. c. 31, §§ 41-43 (1986 ed.). On October 23, 1984, the commission heard the consolidated appeals from the two five-day suspensions and Carney's discharge from the department. The commission found no violation of Carney's rights under either the United States or Massachusetts Constitutions and that the questions propounded to Carney fell within the permissible scope of inquiry as established by both State and Federal law. Accordingly, the commission concluded that just cause existed to support the actions taken by the authority against Carney, and recommended upholding the two five-day suspensions and the discharge.

Despite subsequent appeals to the commission, to the District Court, and, by an action in the nature of certiorari, to the Superior Court as provided by G. L. c. 249, § 4 (1986 ed.), the commission's decision to uphold Carney's suspension and discharge was repeatedly affirmed.

Carney presents two issues on appeal: (1) whether the department properly advised Carney of his options and the specific consequences of his refusal to answer questions put to him; and (2) whether the department adequately assured Carney of the scope of his immunity from subsequent criminal prosecution if he answered the questions. For the reasons set forth below, we conclude that the department, in its interrogation of Carney, failed in both these respects.

3. *Consequences resulting from refusal to respond.* It is well settled that public employees cannot be discharged simply

under the Fifth Amendment. *Baker* v. *Lawrence*, 379 Mass. 322, 331 n.14 (1979) (immunity arises because of pressure of job sanction even absent statute). Therefore, the exclusionary rule found in the Fifth Amendment automatically bars their admissibility. *Garrity*, *supra* at 500.

because they invoke their privilege under the Fifth Amendment to the United States Constitution not to incriminate themselves in refusing to respond to questions propounded by their employers. *Uniformed Sanitation Men Ass'n, Inc.* v. *Commissioner of Sanitation of New York*, 392 U.S. 280, 283-284 (1968). Statements compelled from employees at a disciplinary hearing, under threat of discharge, cannot constitutionally be held against them in a later criminal prosecution. *Garrity* v. *New Jersey*, 385 U.S. 493, 500 (1967). Notwithstanding the Fifth Amendment prohibition, a public employer does not remain totally helpless in discovering information relevant to its employees' job performance. Indeed, as we held in *Broderick* v. *Police Comm'r of Boston*, 368 Mass. 33, 38 (1975), cert. denied, 423 U.S. 1048 (1976), public employees can be discharged for refusing to answer questions narrowly drawn and specifically related to their job performance, where the answers cannot be used against them in a criminal proceeding.

Where public employers compel answers in an investigation, however, the employer, at the time of the interrogation, must specify to the employee the precise repercussions (i.e., suspension, discharge, or the exact form of discipline) that will result if the employee fails to respond. See *Kalkines* v. *United States*, 473 F.2d 1391, 1393 (Ct. Cl. 1973). Where, as here, economic sanctions threaten an individual's livelihood, a general warning that the employee may be subject to "departmental disciplinary proceedings" is insufficient.[6] Moreover, an employee's awareness that other employees have been punished in similar circumstances does not render recitation of the warning unneces-

[6] Although the United States Supreme Court has not spoken directly to this issue, in factually similar cases the Court has specifically noted instances where public employees were informed of the precise punishment, usually dismissal, for refusing to answer questions put to them by their employers. See, e.g., *Garrity* v. *New Jersey*, 385 U.S. 493, 494 (1967) (each applicant warned that refusal to answer could result in removal from office); *Uniformed Sanitation Men Ass'n, Inc.*, *supra* at 284 (employees required to answer questions where threatened by loss of public employment); accord *Confederation of Police* v. *Conlisk*, 489 F.2d 891, 895 (7th Cir. 1973) (police officers aware that refusal to answer questions could result in discharge).

sary; the burden to inform remains on the employer at each appropriate stage of the questioning. The record demonstrates that Deputy Chief Flanagan, while interrogating Carney, failed to meet this standard.

4. *Transactional immunity required to compel testimony.* An employer may compel an employee under threat of discharge to answer questions reasonably related to job performance. *Patch* v. *Mayor of Revere*, 397 Mass. 454, 455 (1986). Because of the United States Constitution's Fifth Amendment privilege against self-incrimination, however, any answers obtained involuntarily may not be used against the employee in a subsequent criminal proceeding. *Garrity* v. *New Jersey*, 385 U.S. 493, 500 (1967). This Fifth Amendment exclusionary rule provides the functional equivalent of "use" or "derivative use" immunity, which is all the Fifth Amendment requires to displace the privilege. *Kastigar* v. *United States*, 406 U.S. 441, 453 (1972). In *Lefkowitz* v. *Turley*, 414 U.S. 70, 85 (1973), the United States Supreme Court stated, however, that where answers were elicited under threat of the loss of employment, "States must offer to the witness *whatever* immunity is required to supplant the privilege . . . ." (emphasis added). This court has traditionally exercised its prerogative to interpret art. 12, the Massachusetts Constitution's privilege against self-incrimination, more broadly than its Federal counterpart.[7] See *Attorney Gen.* v. *Colleton*, 387 Mass. 790, 795-796 (1982). In Massachusetts, art. 12 of the Declaration of Rights requires transactional immunity to supplant the privilege against self-incrimination,[8] even in the context of public employment. Cf.

[7] The Fifth Amendment states in pertinent part that "[no]. . . person shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. Article 12 of the Declaration of Rights is somewhat broader and states: "No subject shall be . . . compelled to accuse, or furnish evidence against himself."

[8] The Supreme Court described transactional immunity as that which "grant[s] immunity from prosecution for offenses to which compelled testimony relates." *Kastigar* v. *United States*, 406 U.S. 441, 443 (1972). Use and derivative use immunity are described as "immunity from the use of compelled testimony and evidence derived therefrom." *Id.*

Attorney Gen. v. *Colleton*, *supra* at 793 (transactional immunity required in context of private citizen).

As our opinion in *Colleton* makes clear, this court has never before faced the question whether transactional immunity is needed to overcome a claim of testimonial privilege by a public employee. *Colleton*, *supra* at 798. While *Baker* v. *Lawrence*, 379 Mass. 322 (1979), and *Silverio* v. *Municipal Court of the City of Boston*, 355 Mass. 623, cert. denied, 396 U.S. 878 (1969), recognized the sufficiency of use immunity under the United States Constitution, neither case focused on the removal of the employee's claim of privilege, but rather on the official's ability or fitness for government service. *Colleton*, *supra* at 798. Significantly, neither the plaintiffs in *Baker* and *Silverio*, *supra*, nor the plaintiff in *Patch* v. *Mayor of Revere*, *supra*, invoked the privilege against self-incrimination under art. 12, but chose to rely instead on the Fifth Amendment.

The record clearly demonstrates that Officer Carney never received from the district attorney a promise not to prosecute him. Assuming without deciding that a police official in charge of an internal investigation could make an enforceable promise not to prosecute without the district attorney's assent, the record does not reflect such a promise was made. Carney, therefore, has demonstrated error adversely affecting his material rights resulting from the trial judge's allowance of Springfield's motion for summary judgment.

The judgment is reversed and a new judgment shall be entered quashing the decision of the Civil Service Commission.

So ordered.

COMMONWEALTH *vs.* ROBERT HARVEY.

Middlesex February 4, 1986. — April 17, 1986.

Present: WILKINS, LIACOS, NOLAN, LYNCH, & O'CONNOR, JJ.

Constitutional Law, Admissions and confessions, Self-incrimination. *Police*, Self-incrimination. *Evidence*, Videotape, Relevancy and materiality. *Practice, Criminal*, Judicial discretion, Instructions to jury. *Jury and Jurors*.

At the hearing on a motion to suppress certain statements made by the defendant, a police officer, during the course of an internal investigation by his superior officers concerning allegations of misconduct contained in a citizen's complaint filed against him, evidence that there had been no overt threat or direct pressure from his superiors that coerced his choosing to make the statements warranted the conclusion that the defendant had not been compelled to incriminate himself. [355-357]

At a criminal trial, the judge did not abuse his discretion in admitting, as evidence of the complaining witness's sobriety at the time he arrived at a police station, a videotape recording of the witness made while he was being placed under protective custody, in which he made four separate accusations against the defendant, where limiting instructions given by the judge were sufficient to clarify the purpose for which the evidence could properly be used. [357-359]

At a criminal trial in which the jury, during their deliberations, had made two requests for further instruction on the meaning of proof beyond a reasonable doubt but, when the judge was unable to respond to the second request promptly, because he was then presiding in another session, withdrew their inquiry and indicated that verdicts had been reached, the judge did not err in denying the defendant's request for questioning of the jury concerning the need for additional instructions, where the defendant failed to demonstrate that he had been deprived of his right to have issues of law explained to the jury, or that any prejudice to him had resulted. [359-360]

INDICTMENTS found and returned in the Superior Court Department on April 11, 1984.

A motion to suppress evidence was heard by *Robert A. Barton*, J., and the cases were tried before him.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Daniel J. O'Connell, III (*Eileen D. Vodoklys* with him) for the defendant.

Karen J. Kepler, Assistant District Attorney, for the Commonwealth.

NOLAN, J. On April 5, 1984, a Middlesex County grand jury returned two indictments charging the defendant, Robert Harvey, with larceny from the person, see G. L. c. 266, § 25 (*b*) (1984 ed.), and civil rights violations under G. L. c. 265, § 37 (1984 ed.). On August 20, 1984, the defendant's trial commenced before a judge and a jury in the Superior Court in Middlesex County. The defendant was found guilty on both indictments. He appealed to the Appeals Court. We transferred the case to this court on our own motion.

The defendant argues that (1) the judgments should be reversed and the indictments dismissed because he was compelled to furnish evidence against himself in violation of art. 12 of the Massachusetts Declaration of Rights; (2) the trial judge erred by admitting in evidence a videotape of the victim; and (3) the defendant was denied due process of law and his right to a trial by jury as a result of the judge's failure to suspend deliberations after the jury requested further instruction on the meaning of proof beyond a reasonable doubt. We find no error and affirm the convictions. The relevant facts are summarized as follows.

On March 21, 1984, the defendant was employed as a police officer by the city of Cambridge. On that date, he was working the midnight to 8 A.M. shift and was assigned to drive police wagon No. 419, which is a small, closed truck that is used by the Cambridge police department primarily to transport prisoners. At approximately 1:30 A.M., the defendant was dispatched to Cambridge City Hospital to pick up a man, later identified as Charles Dayton. Dayton was believed to be intoxicated and was in need of shelter for the evening.

At trial, Dayton testified that, when the police wagon arrived at the hospital, he stepped into the rear, believing that he would be transported to the Cambridge police station and placed in protective custody for the evening. See G. L. c. 111B, § 8 (1984 ed.). Dayton further testified that, instead of driving him to the station, the defendant drove to a dark area (later identified as the Brown and Ferris Industries' reclamation yards in East Cambridge [BFI]) where he stopped the police wagon, opened the back door, and requested Dayton to step out. When Dayton complied, the defendant searched him, took approximately $60 in cash from him, and abandoned him. Dayton testified that he was unfamiliar with the area and began to walk in the direction of lights in the distance. After walking for approximately five minutes, he came upon a weighing station operated by a BFI employee. Dayton told the employee that he had just been "robbed by the guy in the wagon," and requested permission to telephone the police.

A short time later, Officers Lester J. Sullivan and J. Michael Walsh of the Cambridge police department arrived on the scene. The officers spoke with Dayton, placed him in their patrol car, and proceeded to the Cambridge police station. While en route to the station, the officers observed their supervisor, Sergeant Edward C. Hussey, Jr., who was in his patrol car at the intersection of Cambridge and Harding Streets. The officers stopped their cruiser and had a discussion with Sergeant Hussey regarding Dayton's allegations. The sergeant also spoke directly to Dayton.

After hearing Dayton's description of what had occurred, Sergeant Hussey radioed the defendant and requested him to report to the intersection of Cambridge and Harding Streets. The defendant complied and upon his arrival was asked by Sergeant Hussey whether he recognized Dayton. The defendant looked at Dayton, who was still seated in the patrol car, and responded affirmatively. The defendant then told the sergeant that he had removed Dayton from the hospital and, at Dayton's request, drove him to the corner of Gore and Fifth Streets in Cambridge. At this time, Dayton identified the defendant as the person who had taken his money. The sergeant requested each of the officers (Sullivan, Walsh, and Harvey) to return to police headquarters to write a report concerning the incident. All of the officers complied. The defendant's written statement was consistent with what he had told Sergeant Hussey orally.

Upon the officers' arrival at the station, the paperwork to place Dayton in protective custody was completed. This booking procedure was recorded on a videotape that was admitted in evidence at the defendant's trial for the limited purpose of showing Dayton's condition as to sobriety around the time of the alleged incident. While at the station Dayton filed a citizen's complaint with the Cambridge police department regarding the events described above.

The defendant did not testify at trial. He did, however, dispute Dayton's allegations on four separate occasions, the first two occurring, as previously described, on March 21, 1984. The defendant prepared a second written report on March 27, 1984, at the direction of Captain William Burke, the night commander. Captain Burke obtained the report from the defendant at the request of Lieutenant William D. Cummings. Lieutenant Cummings was the officer conducting the investigation of Dayton's citizen's complaint as part of his duties with the inspectional services section of the Cambridge police department. In all material respects, the second report was identical to the report prepared and submitted by the defendant on March 21, 1984.

On March 29, 1984, the defendant was interviewed by Lieutenant Cummings as part of the investigation of Dayton's complaint. The defendant's presence at the interview was arranged through a letter sent by Lieutenant Cummings to Captain Burke, "requesting that Officer Robert Harvey report to [Cummings's] office on March 29, 1984." The defendant appeared for the interview accompanied by Officer Edward Loder, president of the Cambridge patrolman's association. The interview was tape recorded. The tape was later transcribed and with the defendant's statements of March 21 and 27, 1984, admitted in evidence at the defendant's trial. We now address the defendant's arguments.

1. *The motion to suppress.* On August 6, 1984, the defendant filed a pretrial motion to suppress each of the statements that he had made regarding the events of March 21, 1984. See Mass. R. Crim. P. 13, 378 Mass. 871 (1979). The motion was heard on the same day and the judge denied the defendant's

motion. On August 10, 1984, the judge issued a detailed order outlining his findings of fact and rulings of law.[1] In denying the motion, the judge ruled that none of the statements given by the defendant was the result of a "custodial interrogation" within the meaning of *Miranda* v. *Arizona,* 384 U.S. 436, 444 (1966).[2] See *Commonwealth* v. *Bryant,* 390 Mass. 729, 737 (1984) (factors considered in evaluating whether interrogation is custodial). He further ruled that the defendant's statements were not obtained by coercion under the threat of removal from office as exemplified by the United States Supreme Court's decision in *Garrity* v. *New Jersey,* 385 U.S. 493, 500 (1967).[3] Relying exclusively on *United States* v. *Indorato,* 628 F.2d 711 (1st Cir.), cert. denied, 449 U.S. 1016 (1980), the judge ruled that the defendant's "subjective fear that he would be dismissed [from office] if he refused to give the statements under consideration [did] not demonstrate that these statements were coerced."

The defendant argues that, in ruling on the motion to suppress, the judge erred by "confin[ing] his analysis to federal constitutional principles." As we understand it, the thrust of the defendant's claim is that a statement may be considered sufficiently voluntary so as to survive a challenge under the

[1] The defendant has adopted the majority of the judge's findings of fact for purposes of this appeal.

[2] In his brief, the defendant has not advanced the argument that his statements were the result of a custodial interrogation in violation of *Miranda* v. *Arizona, supra,* but rather contends that the statements were "compelled" in violation of art. 12. Accordingly, we do not address the *Miranda* issue.

[3] In *Garrity* v. *New Jersey, supra,* the appellants were police officers who were being investigated by the State Attorney General as part of an inquiry into alleged irregularities in the handling of cases in the New Jersey Municipal Courts. *Id.* at 494. Before being questioned, each officer was warned, "(1) that anything he said might be used against him in any state criminal proceeding; (2) that he had the privilege to refuse to answer if the disclosure would tend to incriminate him; but (3) that if he refused to answer he would be subject to removal from office." *Id.* The Supreme Court stated that the choice the officers were given "was either to forfeit their jobs or incriminate themselves." *Id.* at 497. The Court ruled that statements obtained in this manner "were infected by the coercion inherent in this scheme of questioning and cannot be sustained as voluntary." *Id.* at 497-498.

Fifth and Fourteenth Amendments to the United States Constitution, but still be regarded as "compelled" under art. 12.[4] Although such might be the case, we need not decide the issue at this time, since there is nothing in the record before us to indicate that the defendant was "compelled to accuse, or furnish evidence against himself."

We acknowledge that the defendant was required by the rules of the Cambridge police department to obey the lawful orders of his superior officers, and that this imposed upon him an obligation to answer questions regarding his duties as a police officer. See *Silverio* v. *Municipal Court of the City of Boston*, 355 Mass. 623, 626, cert. denied, 396 U.S. 878 (1969). We further understand that the defendant prepared his second written statement and attended the interview before Lieutenant Cummings while the defendant was the subject of a citizen's complaint. Furthermore, it is clear that the defendant may have faced disciplinary proceedings, which ultimately could have resulted in his dismissal, if he refused to answer pertinent questions during the investigation.[5] However, the fact that there existed the possibility of adverse consequences from the defendant's failure to cooperate does not demonstrate that the defendant was "compelled" to incriminate himself. The

[4] The defendant correctly recognizes that "[w]e have consistently held that art. 12 requires a broader interpretation than that of the Fifth Amendment." See *Attorney Gen.* v. *Colleton*, 387 Mass. 790, 796 (1982). We do not retreat from that position today. The cases upon which the defendant relies have principally dealt with the "scope of immunity necessary to displace the privilege under Massachusetts law." *Id.* at 792. *Emery's Case*, 107 Mass. 172, 185 (1871).

[5] It is not clear from the record the extent to which officers were disciplined for refusing to cooperate with internal investigations. The testimony of Lieutenant Cummings in response to an inquiry from the judge is conflicting on this point:

THE JUDGE: "Have you ever known anybody who refused to answer questions that wasn't disciplined?"

THE WITNESS: "No."

THE JUDGE: "Has anybody refused to answer?"

THE WITNESS: "Not that I know of."

THE JUDGE: "So has anybody been disciplined for not answering?"

THE WITNESS: "Not that I know of, no."

defendant has not argued that there was any overt threat or direct pressure from his superiors that coerced his choice. He was not told that he would be discharged if he refused to cooperate on grounds of self-incrimination. See *United Sanitation Men Ass'n* v. *Commissioner of Sanitation of the City of N.Y.*, 392 U.S. 280, 284-285 (1968). Unlike the appellants in *Garrity* v. *New Jersey*, 385 U.S. 493, 497 (1967), the defendant was not told that he had a single choice between forfeiting his employment or incriminating himself. Moreover, as found by the judge in the Superior Court, the defendant has cited no State statute or law that would "mandate his removal from office upon a failure to provide the requested statements."

The defendant made a calculated decision to provide four exculpatory statements when confronted by his superiors with allegations of misconduct. His choice was voluntary. As we stated in *Silverio*, *supra* at 630, "[w]e assume that [the defendant] had a right to refuse to answer . . . questions on constitutional grounds. We assume also that he could not have been discharged for claiming the privilege." See *Baker* v. *Lawrence*, 379 Mass. 322, 330-332 (1979). See also *Slochower* v. *Board of Educ.*, 350 U.S. 551 (1956). The defendant did not claim any privilege, or voice any objection; rather, he cooperated voluntarily. The choice was his own. There was no error.[6]

2. *Admission of the videotape*. The defendant next argues that the judge erred in admitting in evidence a videotape of Dayton that was made while Dayton was being placed under protective custody at the Cambridge police station. The videotape was initially offered by the Commonwealth as a prior consistent statement of the complaining witness, and as evidence of Dayton's sobriety at the time he arrived at the station.

[6] In *Walden* v. *Board of Registration in Nursing*, 395 Mass. 263, 270 (1985), we observed that one of the consequences under the broader protection of art. 12 — as compared to the Fifth Amendment — might include the extent to which and the manner in which a person would have to assert the protection of art. 12 in order to receive art. 12 protections. The defendant in this case is seeking to benefit from the protections of art. 12 without having made any effort to assert the privilege of art. 12 before making the statements in question. In the absence of compulsion, we are not persuaded to rule that the privilege is self-executing.

The judge ruled that the tape was inadmissible as a prior consistent statement. However, over the defendant's objection and with a limiting instruction, he admitted the tape as evidence of Dayton's condition.[7] The defendant contends on appeal, as he did at trial, that the probative value of the tape was outweighed by its prejudicial effect. See *Green* v. *Richmond*, 369 Mass. 47, 59-60 (1975).

In this videotape, in which the defendant does not appear, Dayton is shown at the booking desk. Four police officers are present during most of the interrogation. While one officer, after advising him of his Miranda rights, asked him to describe what occurred, Dayton narrated what happened from the time that he went to Cambridge City Hospital, seeking placement in protective custody, until police responded to the weighing station. Dayton did not know the name of the police officer, but referred to him as the driver of Box 419, the wagon which the defendant was operating. Dayton, in total, made four separate accusations against the defendant on the videotape. Twice he stated the defendant "took my money" and twice he said that the defendant "ripped me off." His accusations on the videotape were substantially the same as those that he made on the witness stand. These accusations had also been the subject of the testimony of the employee at the weighing station when asked to repeat what Dayton had told him.

We have consistently recognized that the decision whether the probative value of relevant evidence is outweighed by its

[7]The judge's instruction, in part, reads as follows: "Now, during this video tape, there is a conversation that involves Charles Dayton. Now, as far as the words of Charles Dayton are concerned, you are absolutely not to consider those words as establishing the truth of any facts contained within those words. The only reason the Court is allowing you to watch this video tape is for you to determine and give such weight as you desire as far as this video tape is concerned. You may consider it relative to his condition as to sobriety at the time this supposed interview took place. And, you may consider it, and give any weight that you desire relative to what his sobriety was within the recent hours prior to this particular interview. So again, the Court emphasizes, you are not to consider the words and the meaning of the words, as any evidence relative to what, if anything, may have occurred earlier that particular morning."

prejudicial effect is largely within the discretion of the trial judge. Moreover, that decision "will be accepted on review except for palpable error." *Commonwealth* v. *Young*, 382 Mass. 448, 462-463 (1981).

The defendant claims that the prejudice in this case was compounded by the fact that the jury were permitted to hear Dayton's out-of-court statements in a dramatic videotape presentation. We agree that there is a difference in impact when evidence is presented to a jury through this medium. The better course would have been to redact the accusations from the audio portion. We shall not reverse, however, except for an abuse of discretion and we perceive no such abuse here. We do not want to be understood as discouraging the use of videotapes which are, on balance, a reliable evidentiary resource. The limiting instructions given by the judge were sufficient to clarify the purpose for which the evidence could properly be used. See *Commonwealth* v. *Cruz*, 373 Mass. 676, 692 (1977). "[W]e assume that the jury understood and followed [these] instruction[s]." *Commonwealth* v. *Tuitt*, 393 Mass. 801, 809 (1985).

We find no merit in the defendant's argument that the videotape could have been used by the jury as evidence of the defendant's admission by silence because the defendant was not shown to be present on the videotape.

3. *Further instruction.* The defendant's case was submitted to the jury on August 28, 1984. On their second day of deliberation, the jury requested additional instruction on the meaning of proof beyond a reasonable doubt. The judge provided the instruction by repeating that portion of his original charge relating to reasonable doubt.

On August 30, 1984, at approximately 10 A.M., the jury began their third day of deliberation. At 10:05 A.M. the jury sent a note to the judge requesting further instruction on the meaning of reasonable doubt. The judge was unable to respond as soon as he received the note, because he was presiding in another session. At approximately 10:45 A.M., the jury sent a second note to the judge withdrawing the question and indicating that verdicts were reached. The defendant objected to the

judge's decision to receive the verdicts and requested that the judge inquire of the jury concerning the need for further instruction. The judge denied the defendant's request and accepted the verdicts. We find no error in the judge's decision.

The defendant correctly states that he is entitled to have issues of law explained to the jury. See *Commonwealth* v. *King*, 366 Mass. 6, 10 (1974), cert. denied sub nom. *McAlister* v. *Massachusetts*, 419 U.S. 1115 (1975). The defendant has not demonstrated that he was deprived of this right, or that any prejudice resulted from this occurrence. The jury were best suited to decide whether further instruction was necessary, and their action speaks for itself. Moreover, we find the defendant's reliance on G. L. c. 234, § 34 (1984 ed.), misplaced.

Judgments affirmed.

COMMONWEALTH *vs.* GEORGE SASU.

Middlesex. January 3, 1989. — April 12, 1989.

Present: WILKINS, LIACOS, ABRAMS, NOLAN, & LYNCH, JJ.

District Court, Appellate Division, Jurisdiction. *Motor Vehicle*, Failure to file accident report. *Evidence*, Accident report. *Practice, Criminal*, Appeal, Judgment. *Constitutional Law*, Self-incrimination. *Witness*, Self-incrimination. *Waiver*.

Where the operator of a motor vehicle which had struck and killed a pedestrian was found guilty and sentenced in a District Court on criminal charges, and was also found "responsible" for a civil infraction, namely, failure to file an accident report of the same occurrence, as he was required to do by G. L. c. 90, § 26, the operator was entitled to appeal the finding of "responsible" to the Appellate Division even though the matter had been placed on file, with his consent, and without the imposition of a fine. [598-599]

Failure of a motor vehicle operator to file an accident report within the time allowed by G. L. c. 90, § 26, following an accident in which a pedestrian was struck and killed, was not deemed a waiver of his privilege against self-incrimination asserted as a defense in a civil proceeding against him for failure to file the report, where the operator, at the time the civil citation was issued, had been charged with criminal violations arising from the same occurrence [599-601]; moreover, in the circumstances, the reporting requirement infringed on the operator's rights under the Fifth Amendment to the United States Constitution [601].

TRAFFIC CITATION issued on August 26, 1986.

The case was heard in the Cambridge Division of the District Court Department by *Lawrence F. Feloney*, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Kurt N. Schwartz, Assistant District Attorney, for the Commonwealth.

Camille F. Sarrouf (*Frank C. Corso* with him) for the defendant.

LYNCH, J. This is an appeal by the Commonwealth from a decision of the Appellate Division of the District Court vacating a finding by the Cambridge Division of the District Court Department that defendant George Sasu was "responsible" for failing to file a motor vehicle accident report as required by G. L. c. 90, § 26 (1986 ed.), and ordering that a finding of "not responsible" be entered. We transferred the case to this court on our own motion and now affirm.

The facts underlying the action are not disputed. On June 25, 1986, while operating his motor vehicle in Belmont, the defendant struck and killed a pedestrian. On August 11, 1986, the Belmont police department sought criminal complaints against the defendant for vehicular homicide, G. L. c. 90, § 24G (*b*), and for failure to yield to a pedestrian within a crosswalk, G. L. c. 89, § 11. After trial in the District Court on the criminal charges, the defendant was found guilty and sentenced on December 23, 1986.

On August 18, 1986, the Belmont police department notified the defendant by letter that he had not yet submitted an accident report as required by G. L. c. 90, § 26,[1] and that, unless he submitted a report within one week, the department would apply for a civil complaint against him. The defendant neither replied to the letter nor filed the report, and on August 26, 1986, the Belmont police issued a motor vehicle traffic citation to the defendant and assessed a fine of twenty-five dollars for violation of c. 90, § 26.

On September 9, 1986, the defendant filed an accident report with the Belmont police department and with the Registry of Motor Vehicles, claiming in the report his privilege against self-incrimination under the Fifth Amendment to the United States Constitution and art. 12 of the Massachusetts Declaration

[1] General Laws c. 90, § 26, provides, in pertinent part: "Every person operating a motor vehicle which is involved in an accident in which any person is killed or injured or in which there is damage in excess of one thousand dollars to any one vehicle or other property shall, within five days after such accident, report in writing to the registrar on a form approved by him and send a copy thereof to the police department having jurisdiction . . . where such accident occurred . . . ."

of Rights.[2] After a hearing on October 16, 1986, a magistrate entered a finding against the defendant of "responsible" for failing to file the statutory accident report. The defendant timely appealed from the magistrate's decision. At the conclusion of the criminal case the judge heard the appeal, found the defendant "responsible," and placed the case on file with the defendant's consent. Upon defendant's appeal to the Appellate Division the finding of "responsible" was vacated.

The Commonwealth contends first of all that the Appellate Division lacked jurisdiction to hear the appeal because the complaint was filed with the defendant's consent after a finding of "responsible," but without any assessment of costs. The Commonwealth cites, inter alia, *Commonwealth* v. *Delgado*, 367 Mass. 432, 437-438 (1975), for the well-established principle that no appeal may be taken until after judgment and that, where a complaint is filed with the defendant's consent, the disposition is not final. This rule evolved from criminal cases which articulate the view that judgment in a criminal case is the sentence. *Id.* at 438. If a defendant wishes to appeal alleged error in a criminal proceeding, then a demand for sentencing must be made so that a final disposition is reached. *Id.* The Commonwealth's reliance here on this principle is misplaced, despite the fact that the complaint in this case was filed without an assessment of fines.

The issuance of a citation for violation of G. L. c. 90, § 26, is governed by the provisions of G. L. c. 90C, § 2, which allows issuance of motor vehicle citations for "any violation of any statute, ordinance, by-law or regulation relating to the operation or control of motor vehicles" other than those specifically excepted. G. L. c. 90C, § 1 (1986 ed.). Section 3(A) of c. 90C expressly governs civil motor vehicle violations for which the maximum penalty or fine is not more than $100 for the first offense and does not provide for a penalty of imprisonment.[3] By the terms of the statute, after hearing before a

[2] Since we decide that the defendant properly invoked his Fifth Amendment rights, we need not discuss the protections of art. 12.

[3] In its decision, the Appellate Division noted that the schedule of assessments promulgated by the Chief Justice of the District Court Department

clerk-magistrate and a de novo appeal to a District Court judge, a defendant's appeal from a decision of the judge "shall be governed by rules promulgated by the chief justice of the district court" providing a "simplified method of appeal" for civil motor vehicle infractions. Rule VII (b) (2) of the Trial Court Rules, the Uniform Rules on Civil Motor Vehicle Infractions, as amended (1986), provides that, if a violator "has been found guilty and is simultaneously being sentenced upon a criminal motor vehicle violation that arose from the same occurrence as one or more civil motor vehicle infractions," the judge may direct that the civil complaint be filed without imposition of a fine. Infractions may be placed on file only in those limited circumstances where there has been a guilty finding in a criminal case arising from the same circumstances. The rule further provides for an appeal to the Appellate Division on an issue of law following entry of the District Court judge's determination of responsibility in the civil case. Rule VII (d) (1), Trial Court Rules, as amended (1986). Such an appeal is available "following adjudication by judges in cases heard on appeal following a clerk-magistrate's finding and disposition, *and in cases where the civil motor vehicle infraction arose from the same occurrence as a criminal motor vehicle violation cognizable* under G. L. c. 90C, s. 3(B)" (emphasis supplied). Rule VII (a), Trial Court Rules, as amended (1986). We conclude, from these provisions and from the civil nature of the proceedings, that the rule permits an appeal when an infraction has been placed on file and no fine has been imposed.

The Commonwealth next contends that the defendant could not assert his privilege against self-incrimination as a defense during his prosecution for failure to file an accident report because he waived the privilege when he failed to file the report within the time required, and because the privilege does not extend to self-reporting schemes which primarily further noncriminal regulatory objectives. We conclude that the defendant did not waive his constitutional privilege against self-

pursuant to G. L. c. 90C, § 3(A), sets a twenty-five dollar fine for failure to file a c. 90, § 26, accident report.

incrimination, and that, as applied to the defendant in this case, G. L. c. 90, § 26, unconstitutionally infringes on the defendant's rights under the Fifth Amendment to the United States Constitution.

In determining whether a witness has properly invoked the privilege against self-incrimination, we apply Federal standards consistent with strict observance of the constitutional protection. *Commonwealth* v. *Funches*, 379 Mass. 283, 289 (1979), and cases cited. We have long held that a witness "may refuse to testify unless it is '"*perfectly clear*, from a careful consideration of all the circumstances in the case, that the witness is mistaken, and that the answer[s] *cannot possibly* have such tendency" to incriminate' " (emphasis in original). *Id.*, quoting *Hoffman* v. *United States*, 341 U.S. 479, 488 (1951). Although in general a defendant must make a timely assertion of the privilege, see, e.g., *Commonwealth* v. *Harvey*, 397 Mass. 351, 357 (1986); *Walden* v. *Board of Registration in Nursing*, 395 Mass. 263, 268 (1985), and must timely comply with statutory reporting or filing requirements where these can be met without complete relinquishment of constitutional rights, *United States* v. *Sullivan*, 274 U.S. 259, 264 (1927), the defendant here was confronted with a "real and appreciable" threat of incrimination and thus was entitled to rely on the privilege against self-incrimination, even though he did not assert it in a timely-filed accident report. *Marchetti* v. *United States*, 390 U.S. 39, 48, 50-51 (1968). See also *Walden* v. *Board of Registration in Nursing*, *supra* at 266. While criminal charges stemming from the accident were pending against him, and where the information requested on the accident report included, inter alia, the identity of the operator, which was an essential element of the Commonwealth's case against him, the furnishing of any information on the report would have constituted "a link in the chain of evidence needed to prosecute." *Commonwealth* v. *Funches*, *supra* at 289, quoting *Hoffman* v. *United States*, 341 U.S. 479, 486 (1951). The defendant therefore had an absolute right to remain silent at least until the disposition of the criminal charges, and his refusal to furnish an accident report cannot be deemed a waiver

of his privilege against self-incrimination; rather, his refusal was a justifiable exercise of the privilege, as was his direct judicial challenge to the reporting requirement.

For substantially the same reasons, we conclude that, while a c. 90, § 26, accident report is in most cases nonincriminating and primarily aimed at noncriminal, regulatory governmental objectives (see *California* v. *Byers*, 402 U.S. 424, 430-431, 448 [1971]; *Commonwealth* v. *Joyce*, 326 Mass. 751, 753-754 [1951]), where the authorities seeking to compel the defendant to submit a report were the very authorities who had already instituted a criminal prosecution against him, the defendant was clearly faced with a "real [and] substantial danger that the evidence supplied" would incriminate him. *Commonwealth* v. *Joyce*, *supra* at 756. Under the circumstances, *any* information provided by the defendant on the report would tend to incriminate him; the threat of incrimination was not merely a remote possibility or unlikely contingency, see *id.* at 754, but an actual and present danger, against which the defendant was constitutionally protected.

The order of the Appellate Division is affirmed.

So ordered.

USE OF NARCOTICS IN REVERSE UNDERCOVER STING OPERATIONS PROCEDURES/GUIDELINES

MEMORANDUM

TO: Chiefs of Police

FROM: R. Michael Cassidy, Assistant Attorney General
Chief, Narcotics & Organized Crime Division

DATE: September 29, 1992

RE: Reverse Sting Operations

I. INTRODUCTION

In a "reverse sting" or "reverse undercover" operation, an undercover police officer poses as the seller of narcotics and then arrests the target or suspect after giving him drugs in exchange for money. As these operations pose risks to the undercover agent's safety, and raise the possibility that the government could introduce illegal drugs into the general population, they should not be undertaken without careful planning and consideration.

It is our hope that this overview will aid Chiefs of Police in setting up departmental policies to govern "reverse sting" operations. This memorandum will seek to define "reverse stings", outline the issues inherent in obtaining and safeguarding controlled substances, and advise police departments on eliminating conduct that may be considered entrapment.

II. LEGALITY OF REVERSE STINGS

Massachusetts G.L. c. 94C, section 7(d) states: "The following persons shall not require registration and may lawfully possess and distribute controlled substances. . . (3) any public official or law enforcement officer acting in the regular performance of his official duties." An undercover agent lawfully may offer a suspect the opportunity to buy drugs, and then arrest this suspect upon the exchange. Jackson v. United States, 112 S. Ct. 1535, 1541 (1992). See Commonwealth v. Murillo, 32 Mass. App. Ct. 379 (1992).

During a reverse sting, the undercover agent and back-up surveillance officers must make sure that the target does not escape with the drugs, break open or mutilate the package, or ingest any of the controlled substance. Ingestion or redistribution of a drug which causes injury could give rise to a tort claim against the Commonwealth. See e.g., Diaz v. Eli Lilly & Co., 364 Mass. 153 (1973) (exposure to fungicide); Payton v. Abbot Labs, 386 Mass. 540 (1982) (in utero exposure to drug DES). Police officers must also guard against a "rip," whereby purchasers of narcotics attempt to overpower would-be sellers and steal their drugs.

Controlled substances "delivered" to the target must never leave the area under the immediate control of the undercover officer. Nonetheless, some form of possession by the target, either actual or constructive, is necessary to charge the

crimes of distribution or trafficking. Momentary possession is sufficient. Where controlled substances are actually delivered to the target, the arrest should follow immediately upon delivery before the defendant has left the area. As an alternative, a reverse may be conducted more safely by giving the target constructive possession of the narcotics; for example, by giving the target keys to a vehicle containing the drugs in exchange for money, and then arresting the target as he walks toward the vehicle carrying the keys.

III. OBTAINING AND SAFEGUARDING CONTROLLED SUBSTANCES

If a decision is made to do a reverse sting, a department must have an inventory of controlled substances on hand to use in the operation. If this is not possible, the department should contact other agencies, including the Massachusetts State Police, Drug Enforcement Administration, or local drug task forces, to determine if narcotics may be borrowed for this purpose from their drug locker. Each department is required by statute to appoint an "evidence officer" responsible for overseeing the custody, inventory, and destruction of narcotics. G.L. c. 94C, § 47A. This same officer should be responsible for the control of evidence used in a reverse sting.

Controlled substances from closed cases must be utilized for reverse sting operations. Only those narcotics which have been authorized for destruction by the Superior or District

Court in accordance with G.L. c. 94C, § 47A may be so used.[1/] The best practice is to double check with the appropriate prosecutor's office to make sure that no appeal is pending on the case in which the narcotics were originally seized.

Before using drugs for a reverse sting, a police department must contact the Department of Public Health, Division of Food and Drug (DPH) to arrange for permission to allow controlled substances slated for destruction to be reused. State law vests in DPH the responsibility for "destruction [of narcotics] or disposition in any way not prohibited by law". G.L. c. 94C, § 47A. So long as the judicial destruction order contains this language, use of narcotics in a reverse sting operation is not prohibited. However, an individual police department may not unilaterally make this determination without notifying DPH. Drugs from a disposed case should never be used for a reverse sting without obtaining prior authorization from the DPH Destruction Center. DPH maintains records of all drugs which previously have been analyzed at the lab. If something were to happen to the substance which changed its composition or appearance before it was returned to the lab, a police department could become the subject of a criminal investigation for theft or misuse of drugs. See G.L. c. 94C, § 47A.

1/ A "destruction order" may be sought upon the disposition of the criminal proceedings (plea or trial), in which case it should authorize destruction only upon expiration of the appeals period, or the destruction order may be sought after conclusion of the appeals period. Many departments include a destruction order at the bottom of their chain of custody forms.

Controlled substances often change their weight or purity with the passage of long periods of time. Therefore, at a minimum, drugs slated for destruction should be brought back to the laboratory for reanalysis and reweighing to assure that the substance is what the police officers (and the first lab report) purport it to be. DPH will note in its records that the narcotics assigned the original laboratory number were brought in for destruction and reissued for a reverse undercover operation. Police departments should be aware that this process may take over a week, so advance planning is necessary. DPH is in the process of formulating guidelines which will be distributed to Police Chiefs throughout Massachusetts outlining the procedures which DPH will follow in authorizing the use of narcotics in reverse stings.

In some instances it may be advisable to use simulated or counterfeit substances in a reverse sting. This diminishes the dangers inherent in providing real controlled substances to members of the public, even for an instant. It is important to first check with the laboratory to make sure that the substance used will not cause harm if ingested by the person receiving it, and that it will have the simulated appearance and properties of the controlled substance which it is purported to be.[2/]

2/ Whatever counterfeit substance used must be able to pass the kind of testing, chemical or field, likely to be used by the target.

If the entire package delivered to the target contains simulated controlled substances, the target may not be charged with distribution or trafficking, but only with conspiracy or attempt to commit those crimes.

When conducting a reverse sting involving a kilogram or more of cocaine or a bale or more of marijuana, it may be advisable to include only a small amount of those substances in the package actually delivered to the target. The Controlled Substances Act penalizes the distribution of any mixture containing a controlled substance, and the sentences mandated by the trafficking statutes are graduated according to the weight of the entire mixture. See G.L. c. 94C, §§ 32A-32E. "Cutting", or repackaging, previously seized and analyzed narcotics should only be conducted at the laboratory under controlled conditions.

IV. ELIMINATING ENTRAPMENT & OUTRAGEOUS CONDUCT

Reverse stings are susceptible both to defenses of entrapment and alleged due process violations as a result of "outrageous conduct" by the government.

Entrapment is the implanting of criminal ideas in innocent minds and thereby bringing about offenses that otherwise would not have been perpetrated. Commonwealth v. Kouloris, 406 Mass. 281, 284 (1989). The defense of entrapment is appropriately raised by the introduction of some evidence of inducement by a government agent or one acting at his direction. Mere evidence

of solicitation is not enough to show inducement. Commonwealth v. Miller, 361 Mass. 645, 652 (1972). The fact that government agent(s) merely furnished an opportunity or facilities for committing a crime does not constitute entrapment. Id. Evidence that a government agent simply requested to buy or sell cocaine, is not enough to show inducement. Commonwealth v. Thompson, 382 Mass. 379, 383-386 (1981). The defendant must show that the government went beyond simple requests or solicitations and engaged in aggressive persuasion, coercive encouragement, or repeated or persistent solicitations. Commonwealth v. Miller, 361 Mass. at 652; Commonwealth v. Thompson, 382 Mass. at 385.

When some evidence of inducement has been introduced, the burden of proof shifts to the government to prove that the defendant was disposed to deal narcotics before being approached by undercover agents. In a child pornography case, the Supreme Court recently tightened the legal definition of entrapment by requiring proof beyond a reasonable doubt that the defendant was predisposed to commit the crime before the commencement of the government's undercover sting. Jacobson v. United States, 112 S. Ct. 1535 (1992). Because reverse drug operations often invite an entrapment defense, police officers must select their targets carefully and engage in sufficient investigation prior to the ultimate "sting" to insure adequate proof of predisposition.

In order to determine whether the defendant was predisposed to commit the crime, the jury will be allowed to consider:

1. The character or reputation of the defendant;

2. The words and conduct of the defendant during the drug transaction (i.e. whether he was familiar with the parlance of drug business, whether he had drug paraphernalia in his possession, etc.);

3. Whether the defendant was motivated by profit;

4. Whether the defendant demonstrated any reluctance;

5. The nature and extent of the government's inducement and;

6. Whether the defendant's prior criminal record contains substantially similar crimes.

See Whiting v. United States, 296 F.2d 512, 517-517 (1st Cir. 1961); Commonwealth v. Miller, 361 Mass. at 652 (1972).

The best evidence of predisposition is from the defendant's own mouth: undercover officers should engage the target in conversation about his drug business, who he regularly sells to, what prices he commonly charges for narcotics, how long he has been engaged in the business, etc. If possible, this conversation should be recorded by placing a "body wire" on the undercover officer or cooperating informant. Prior judicial authorization is required before secretly monitoring or recording conversations with a target in the target's home or automobile or over the target's home telephone. See Commonwealth v. Blood, 400 Mass. 61 (1987).

In order to avoid being accused of entrapment, agents of the government should not pressure a target who displays a good

deal of reluctance, sell drugs far below their street value, or utilize coercive techniques such as exploiting an addict's need for narcotics, or using informants that are involved in sexual or familial relationships with the target.

A defendant unable to demonstrate entrapment may still argue that the government's action was so outrageous as to violate fundamental fairness. United States v. Russell, 411 U.S. 423 (1973). The Massachusetts Supreme Judicial Court has declared that absent extreme coercion, violence, physical brutality, or the persistent exploitation of personal weakness, due process principles are not transgressed. Commonwealth v. Shuman, 391 Mass. 345 (1984).

Due to the inherent risks of engendering an entrapment defense, reverse sting operations should only be directed at those suspects believed to be reselling the drug. Conducting a reverse delivery of a very small quantity of drugs to a person suspected of buying the substance for his personal use is not advised for two reasons. First, the defendant will argue that his addiction made him overly susceptible to entrapment by the government. Second, conducting a reverse with personal use amounts runs the risk that the target will attempt to swallow or otherwise ingest the narcotics before surveillance officers can move in to effect the arrest.

V. CONCLUSION

Each department should establish its own internal policies governing reverse sting operations consistent with the above-mentioned legal considerations. Care should be taken to centralize the handling of seized narcotics in a single officer who will be responsible for following established Department of Public Health procedures for the reweighing and reanalysis of narcotics prior to their use in reverse stings. Each department should consult with prosecutors from either the appropriate District Attorney's Office or the Attorney General's Narcotics and Organized Crime Division prior to the commencement of the reverse undercover operation to guard against a bona fide entrapment defense.

COMMUNITY POLICING

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The Evolving Strategy of Policing

By George L. Kelling and Mark H. Moore

Policing, like all professions, learns from experience. It follows, then, that as modern police executives search for more effective strategies of policing, they will be guided by the lessons of police history. The difficulty is that police history is incoherent, its lessons hard to read. After all, that history was produced by thousands of local departments pursuing their own visions and responding to local conditions. Although that varied experience is potentially a rich source of lessons, departments have left few records that reveal the trends shaping modern policing. Interpretation is necessary.

Methodology

This essay presents an interpretation of police history that may help police executives considering alternative future strategies of policing. Our reading of police history has led us to adopt a particular point of view. We find that a dominant trend guiding today's police executives—a trend that encourages the pursuit of independent, professional autonomy for police departments—is carrying the police away from achieving their maximum potential, especially in effective crime fighting. We are also convinced that this trend in policing is weakening *public* policing relative to *private* security as the primary institution providing security to society. We believe that this has dangerous long-term implications not only for police departments but also for society. We think that this trend is shrinking rather than enlarging police capacity to help create civil communities. Our judgment is that this trend can be reversed only by refocusing police attention from the pursuit of professional autonomy to the establishment of effective problem-solving partnerships with the communities they police.

This is one in a series of reports originally developed with some of the leading figures in American policing during their periodic meetings at Harvard University's John F. Kennedy School of Government. The reports are published so that Americans interested in the improvement and the future of policing can share in the information and perspectives that were part of extensive debates at the School's Executive Session on Policing.

The police chiefs, mayors, scholars, and others invited to the meetings have focused on the use and promise of such strategies as community-based and problem-oriented policing. The testing and adoption of these strategies by some police agencies signal important changes in the way American policing now does business. What these changes mean for the welfare of citizens and the fulfillment of the police mission in the next decades has been at the heart of the Kennedy School meetings and this series of papers.

We hope that through these publications police officials and other policymakers who affect the course of policing will debate and challenge their beliefs just as those of us in the Executive Session have done.

The Executive Session on Policing has been developed and administered by the Kennedy School's Program in Criminal Justice Policy and Management and funded by the National Institute of Justice and private sources that include the Charles Stewart Mott and Guggenheim Foundations.

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Delving into police history made it apparent that some assumptions that now operate as axioms in the field of policing (for example that effectiveness in policing depends on distancing police departments from politics; or that the highest priority of police departments is to deal with serious street crime; or that the best way to deal with street crime is through directed patrol, rapid response to calls for service, and skilled retrospective investigations) are not timeless truths, but rather choices made by former police leaders and strategists. To be sure, the choices were often wise and far-seeing as well as appropriate to their times. But the historical perspective shows them to be choices nonetheless, and therefore open to reconsideration in the light of later professional experience and changing environmental circumstances.

We are interpreting the results of our historical study through a framework based on the concept of "corporate strategy."[1] Using this framework, we can describe police organizations in terms of seven interrelated categories:

- The sources from which the police construct the legitimacy and continuing power to act on society.
- The definition of the police function or role in society.
- The organizational design of police departments.
- The relationships the police create with the external environment.
- The nature of police efforts to market or manage the demand for their services.
- The principal activities, programs, and tactics on which police agencies rely to fulfill their mission or achieve operational success.
- The concrete measures the police use to define operational success or failure.

Editor's note: *This paper, among the many papers discussed at the Kennedy School's Executive Session on Policing, evoked some of the most spirited exchanges among Session participants. The range and substance of those exchanges are captured in a companion* Perspectives on Policing, *"Debating the Evolution of American Policing."*

Using this analytic framework, we have found it useful to divide the history of policing into three different eras. These eras are distinguished from one another by the apparent dominance of a particular strategy of policing. The political era, so named because of the close ties between police and politics, dated from the introduction of police into municipalities during the 1840's, continued through the Progressive period, and ended during the early 1900's. The reform era developed in reaction to the political. It took hold during the 1930's, thrived during the 1950's and 1960's, began to erode during the late 1970's. The reform era now seems to be giving way to an era emphasizing community problem solving.

"The reform era now seems to be giving way to an era emphasizing community problem solving."

By dividing policing into these three eras dominated by a particular strategy of policing, we do not mean to imply that there were clear boundaries between the eras. Nor do we mean that in those eras everyone policed in the same way. Obviously, the real history is far more complex than that. Nonetheless, we believe that there is a certain professional ethos that defines standards of competence, professionalism, and excellence in policing; that at any given time, one set of concepts is more powerful, more widely shared, and better understood than others; and that this ethos changes over time. Sometimes, this professional ethos has been explicitly articulated, and those who have articulated the concepts have been recognized as the leaders of their profession. O.W. Wilson, for example, was a brilliant expositor of the central elements of the reform strategy of policing. Other times, the ethos is implicit—accepted by all as the tacit assumptions that define the business of policing and the proper form for a police department to take. Our task is to help the profession look to the future by representing its past in these terms and trying to understand what the past portends for the future.

The political era

Historians have described the characteristics of early policing in the United States, especially the struggles between various interest groups to govern the police.[2] Elsewhere, the authors of this paper analyzed a portion of American police history in terms of its organizational strategy.[3] The following discussion of elements of the police organizational strategy during the political era expands on that effort.

Legitimacy and authorization

Early American police were authorized by local municipalities. Unlike their English counterparts, American police departments lacked the powerful, central authority of the crown to establish a legitimate, unifying mandate for their enterprise. Instead, American police derived both their authorization and resources from local political leaders, often ward politicians. They were, of course, guided by the law as to what tasks to undertake and what powers to utilize. But their link to neighborhoods and local politicians was so tight that both Jordan[4] and Fogelson[5] refer to the early police as adjuncts to local political machines. The relationship was often reciprocal: political machines recruited and maintained police in office and on the beat, while police helped ward political leaders maintain their political offices by encouraging citizens to vote for certain candidates, discouraging them from voting for others, and, at times, by assisting in rigging elections.

The police function

Partly because of their close connection to politicians, police during the political era provided a wide array of services to citizens. Inevitably police departments were involved in crime prevention and control and order maintenance, but they also provided a wide variety of social services. In the late 19th century, municipal police departments ran soup lines; provided temporary lodging for newly arrived immigrant workers in station houses;[6] and assisted ward leaders in finding work for immigrants, both in police and other forms of work.

Organizational design

Although ostensibly organized as a centralized, quasi-military organization with a unified chain of command, police departments of the political era were nevertheless decentralized. Cities were divided into precincts, and precinct-level managers often, in concert with the ward leaders, ran precincts as small-scale departments—hiring, firing, managing, and assigning personnel as they deemed appropriate. In addition, decentralization combined with primitive communications and transportation to give police officers substantial discretion in handling their individual beats. At best, officer contact with central command was maintained through the call box.

External relationships

During the political era, police departments were intimately connected to the social and political world of the ward. Police officers often were recruited from the same ethnic stock as the dominant political groups in the localities, and continued to live in the neighborhoods they patrolled. Precinct commanders consulted often with local political representatives about police priorities and progress.

Demand management

Demand for police services came primarily from two sources: ward politicians making demands on the organization and citizens making demands directly on beat officers. Decentralization and political authorization encouraged the first; foot patrol, lack of other means of transportation, and poor communications produced the latter. Basically, the demand for police services was received, interpreted, and responded to at the precinct and street levels.

Principal programs and technologies

The primary tactic of police during the political era was foot patrol. Most police officers walked beats and dealt with crime, disorder, and other problems as they arose, or as they were guided by citizens and precinct superiors. The technological tools available to police were limited. However, when call boxes became available, police administrators used them for supervisory and managerial purposes; and, when early automobiles became available, police used them to transport officers from one beat to another.[7] The new technology thereby increased the range, but did not change the mode, of patrol officers.

Detective divisions existed but without their current prestige. Operating from a caseload of "persons" rather than offenses, detectives relied on their caseload to inform on other criminals.[8] The "third degree" was a common means of interviewing criminals to solve crimes. Detectives were often especially valuable to local politicians for gathering information on individuals for political or personal, rather than offense-related, purposes.

"Most police officers walked beats and dealt with crime, disorder, and other problems as they arose . . ."

Measured outcomes

The expected outcomes of police work included crime and riot control, maintenance of order, and relief from many of the other problems of an industrializing society (hunger and temporary homelessness, for example). Consistent with their

political mandate, police emphasized maintaining citizen and political satisfaction with police services as an important goal of police departments.

In sum, the organizational strategy of the political era of policing included the following elements:

- Authorization—primarily political.
- Function—crime control, order maintenance, broad social services.
- Organizational design—decentralized and geographical.
- Relationship to environment—close and personal.
- Demand—managed through links between politicians and precinct commanders, and face-to-face contacts between citizens and foot patrol officers.
- Tactics and technology—foot patrol and rudimentary investigations.
- Outcome—political and citizen satisfaction with social order.

The political strategy of early American policing had strengths. First, police were integrated into neighborhoods and enjoyed the support of citizens—at least the support of the dominant and political interests of an area. Second, and probably as a result of the first, the strategy provided useful services to communities. There is evidence that it helped contain riots. Many citizens believed that police prevented crimes or solved crimes when they occurred.[9] And the police assisted immigrants in establishing themselves in communities and finding jobs.

"Officers were often required to enforce unpopular laws foisted on immigrant ethnic neighborhoods by crusading reformers . . ."

The political strategy also had weaknesses. First, intimacy with community, closeness to political leaders, and a decentralized organizational structure, with its inability to provide supervision of officers, gave rise to police corruption. Officers were often required to enforce unpopular laws foisted on immigrant ethnic neighborhoods by crusading reformers (primarily of English and Dutch background) who objected to ethnic values.[10] Because of their intimacy with the community, the officers were vulnerable to being bribed in return for nonenforcement or lax enforcement of laws. Moreover, police closeness to politicians created such forms of political corruption as patronage and police interference in elections.[11] Even those few departments that managed to avoid serious financial or political corruption during the late 19th and early 20th centuries, Boston for example, succumbed to large-scale corruption during and after Prohibition.[12]

Second, close identification of police with neighborhoods and neighborhood norms often resulted in discrimination against strangers and others who violated those norms, especially minority ethnic and racial groups. Often ruling their beats with the "ends of their nightsticks," police regularly targeted outsiders and strangers for rousting and "curbstone justice."[13]

Finally, the lack of organizational control over officers resulting from both decentralization and the political nature of many appointments to police positions caused inefficiencies and disorganization. The image of Keystone Cops—police as clumsy bunglers—was widespread and often descriptive of realities in American policing.

The reform era

Control over police by local politicians, conflict between urban reformers and local ward leaders over the enforcement of laws regulating the morality of urban migrants, and abuses (corruption, for example) that resulted from the intimacy between police and political leaders and citizens produced a continuous struggle for control over police during the late 19th and early 20th centuries.[14] Nineteenth-century attempts by civilians to reform police organizations by applying external pressures largely failed; 20th-century attempts at reform, originating from both internal and external forces, shaped contemporary policing as we knew it through the 1970's.[15]

Berkeley's police chief, August Vollmer, first rallied police executives around the idea of reform during the 1920's and early 1930's. Vollmer's vision of policing was the trumpet call: police in the post-flapper generation were to remind American citizens and institutions of the moral vision that had made America great and of their responsibilities to maintain that vision.[16] It was Vollmer's protege, O.W. Wilson, however, who taking guidance from J. Edgar Hoover's shrewd transformation of the corrupt and discredited Bureau of Investigation into the honest

and prestigious Federal Bureau of Investigation (FBI), became the principal administrative architect of the police reform organizational strategy.[17]

Hoover wanted the FBI to represent a new force for law and order, and saw that such an organization could capture a permanent constituency that wanted an agency to take a stand against lawlessness, immorality, and crime. By raising eligibility standards and changing patterns of recruitment and training, Hoover gave the FBI agents stature as upstanding moral crusaders. By committing the organization to attacks on crimes such as kidnapping, bank robbery, and espionage—crimes that attracted wide publicity and required technical sophistication, doggedness, and a national jurisdiction to solve—Hoover established the organization's reputation for professional competence and power. By establishing tight central control over his agents, limiting their use of controversial investigation procedures (such as undercover operations), and keeping them out of narcotics enforcement, Hoover was also able to maintain an unparalleled record of integrity. That, too, fitted the image of a dogged, incorruptible crime-fighting organization. Finally, lest anyone fail to notice the important developments within the Bureau, Hoover developed impressive public relations programs that presented the FBI and its agents in the most favorable light. (For those of us who remember the 1940's, for example, one of the most popular radio phrases was, "The FBI in peace and war"—the introductory line in a radio program that portrayed a vigilant FBI protecting us from foreign enemies as well as villains on the "10 Most Wanted" list, another Hoover/FBI invention.)

"20th-century attempts at reform, originating from both internal and external forces, shaped . . . policing as we knew it through the 1970's."

Struggling as they were with reputations for corruption, brutality, unfairness, and downright incompetence, municipal police reformers found Hoover's path a compelling one. Instructed by O.W. Wilson's texts on police administration, they began to shape an organizational strategy for urban police analogous to the one pursued by the FBI.

Legitimacy and authorization

Reformers rejected politics as the basis of police legitimacy. In their view, politics and political involvement was the *problem* in American policing. Police reformers therefore allied themselves with Progressives. They moved to end the close ties between local political leaders and police. In some states, control over police was usurped by state government. Civil service eliminated patronage and ward influences in hiring and firing police officers. In some cities (Los Angeles and Cincinnati, for example), even the position of chief of police became a civil service position to be attained through examination. In others (such as Milwaukee), chiefs were given lifetime tenure by a police commission, to be removed from office only for cause. In yet others (Boston, for example), contracts for chiefs were staggered so as not to coincide with the mayor's tenure. Concern for separation of police from politics did not focus only on chiefs, however. In some cities, such as Philadelphia, it became illegal for patrol officers to live in the beats they patrolled. The purpose of all these changes was to isolate police as completely as possible from political influences.

Law, especially criminal law, and police professionalism were established as the principal bases of police legitimacy. When police were asked why they performed as they did, the most common answer was that they enforced the law. When they chose not to enforce the law—for instance, in a riot when police isolated an area rather than arrested looters—police justification for such action was found in their claim to professional knowledge, skills, and values which uniquely qualified them to make such tactical decisions. Even in riot situations, police rejected the idea that political leaders should make tactical decisions; that was a police responsibility.[18]

So persuasive was the argument of reformers to remove political influences from policing, that police departments became one of the most autonomous public organizations in urban government.[19] Under such circumstances, policing a city became a legal and technical matter left to the discretion of professional police executives under the guidance of law. Political influence of any kind on a police department came to be seen as not merely a failure of police leadership but as corruption in policing.

The police function

Using the focus on criminal law as a basic source of police legitimacy, police in the reform era moved to narrow their functioning to crime control and criminal apprehension. Police agencies became *law enforcement* agencies. Their goal was to control crime. Their principal means was the use of criminal law to apprehend and deter offenders. Activities that drew the police into solving other kinds of community problems and relied on other kinds of responses were

identified as "social work," and became the object of derision. A common line in police circles during the 1950's and 1960's was, "If only we didn't have to do social work, we could really do something about crime." Police retreated from providing emergency medical services as well—ambulance and emergency medical services were transferred to medical, private, or firefighting organizations.[20] The 1967 President's Commission on Law Enforcement and Administration of Justice ratified this orientation: heretofore, police had been conceptualized as an agency of urban government; the President's Commission reconceptualized them as part of the criminal justice system.

Organizational design

The organization form adopted by police reformers generally reflected the *scientific* or *classical* theory of administration advocated by Frederick W. Taylor during the early 20th century. At least two assumptions attended classical theory. First, workers are inherently uninterested in work and, if left to their own devices, are prone to avoid it. Second, since workers have little or no interest in the substance of their work, the sole common interest between workers and management is found in economic incentives for workers. Thus, both workers and management benefit economically when management arranges work in ways that increase workers' productivity and link productivity to economic rewards.

Two central principles followed from these assumptions: division of labor and unity of control. The former posited that if tasks can be broken into components, workers can become highly skilled in particular components and thus more efficient in carrying out their tasks. The latter posited that the workers' activities are best managed by a *pyramid of control*, with all authority finally resting in one central office.

"... a generation of police officers was raised with the idea that they merely enforced the law ..."

Using this classical theory, police leaders moved to routinize and standardize police work, especially patrol work. Police work became a form of crimefighting in which police enforced the law and arrested criminals if the opportunity presented itself. Attempts were made to limit discretion in patrol work: a generation of police officers was raised with the idea that they merely enforced the law.

If special problems arose, the typical response was to create special units (e.g., vice, juvenile, drugs, tactical) rather than to assign them to patrol. The creation of these special units, under central rather than precinct command, served to further centralize command and control and weaken precinct commanders.[21]

Moreover, police organizations emphasized control over workers through bureaucratic means of control: supervision, limited span of control, flow of instructions downward and information upward in the organization, establishment of elaborate record-keeping systems requiring additional layers of middle managers, and coordination of activities between various production units (e.g., patrol and detectives), which also required additional middle managers.

External relationships

Police leaders in the reform era redefined the nature of a proper relationship between police officers and citizens. Heretofore, police had been intimately linked to citizens. During the era of reform policing, the new model demanded an impartial law enforcer who related to citizens in professionally neutral and distant terms. No better characterization of this model can be found than television's Sergeant Friday, whose response, "Just the facts, ma'am," typified the idea: impersonal and oriented toward crime solving rather than responsive to the emotional crisis of a victim.

The professional model also shaped the police view of the role of citizens in crime control. Police redefined the citizen role during an era when there was heady confidence about the ability of professionals to manage physical and social problems. Physicians would care for health problems, dentists for dental problems, teachers for educational problems, social workers for social adjustment problems, and police for crime problems. The proper role of citizens in crime control was to be relatively passive recipients of professional crime control services. Citizens' actions on their own behalf to defend themselves or their communities came to be seen as inappropriate, smacking of vigilantism. Citizens met their responsibilities when a crime occurred by calling police, deferring to police actions, and being good witnesses if called upon to give evidence. The metaphor that expressed this orientation to the community was that of the police as the "thin blue line." It connotes the existence of dangerous external threats to communities, portrays police as standing between that danger and good citizens, and implies both police heroism and loneliness.

Demand management

Learning from Hoover, police reformers vigorously set out to sell their brand of urban policing.[22] They, too, performed on radio talk shows, consulted with media representatives

about how to present police, engaged in public relations campaigns, and in other ways presented this image of police as crime fighters. In a sense, they began with an organizational capacity—anticrime police tactics—and intensively promoted it. This approach was more like selling than marketing. Marketing refers to the process of carefully identifying consumer needs and then developing goods and services that meet those needs. Selling refers to having a stock of products or goods on hand irrespective of need and selling them. The reform strategy had as its starting point a set of police tactics (services) that police promulgated as much for the purpose of establishing internal control of police officers and enhancing the status of urban police as for responding to community needs or market demands.[23] The community "need" for rapid response to calls for service, for instance, was largely the consequence of police selling the service as efficacious in crime control rather than a direct demand from citizens.

"Foot patrol, when demanded by citizens, was rejected as an outmoded, expensive frill."

Consistent with this attempt to sell particular tactics, police worked to shape and control demand for police services. Foot patrol, when demanded by citizens, was rejected as an outmoded, expensive frill. Social and emergency services were terminated or given to other agencies. Receipt of demand for police services was centralized. No longer were citizens encouraged to go to "their" neighborhood police officers or districts; all calls went to a central communications facility. When 911 systems were installed, police aggressively sold 911 and rapid response to calls for service as effective police service. If citizens continued to use district, or precinct, telephone numbers, some police departments disconnected those telephones or got new telephone numbers.[24]

Principal programs and technologies

The principal programs and tactics of the reform strategy were preventive patrol by automobile and rapid response to calls for service. Foot patrol, characterized as outmoded and inefficient, was abandoned as rapidly as police administrators could obtain cars.[25] The initial tactical reasons for putting police in cars had been to increase the size of the areas police officers could patrol and to take the advantage away from criminals who began to use automobiles. Under reform policing, a new theory about how to make the best tactical use of automobiles appeared.

O.W. Wilson developed the theory of preventive patrol by automobile as an anticrime tactic.[26] He theorized that if police drove conspicuously marked cars randomly through city streets and gave special attention to certain "hazards" (bars and schools, for example), a feeling of police omnipresence would be developed. In turn, that sense of omnipresence would both deter criminals and reassure good citizens. Moreover, it was hypothesized that vigilant patrol officers moving rapidly through city streets would happen upon criminals in action and be able to apprehend them.

As telephones and radios became ubiquitous, the availability of cruising police came to be seen as even more valuable: if citizens could be encouraged to call the police via telephone as soon as problems developed, police could respond rapidly to calls and establish control over situations, identify wrong-doers, and make arrests. To this end, 911 systems and computer-aided dispatch were developed throughout the country. Detective units continued, although with some modifications. The "person" approach ended and was replaced by the case approach. In addition, forensic techniques were upgraded and began to replace the old "third degree" or reliance on informants for the solution of crimes. Like other special units, most investigative units were controlled by central headquarters.

Measured outcomes

The primary desired outcomes of the reform strategy were crime control and criminal apprehension.[27] To measure achievement of these outcomes, August Vollmer, working through the newly vitalized International Association of Chiefs of Police, developed and implemented a uniform system of crime classification and reporting. Later, the system was taken over and administered by the FBI and the *Uniform Crime Reports* became the primary standard by which police organizations measured their effectiveness. Additionally, individual officers' effectiveness in dealing with crime was judged by the number of arrests they made; other measures of police effectiveness included response time (the time it takes for a police car to arrive at the location of a call for service) and "number of passings" (the number of times a police car passes a given point on a city street). Regardless of all other indicators, however, the primary measure of police effectiveness was the crime rate as measured by the *Uniform Crime Reports*.

In sum, the reform organizational strategy contained the following elements:

- Authorization—law and professionalism.
- Function—crime control.
- Organizational design—centralized, classical.
- Relationship to environment—professionally remote.
- Demand—channeled through central dispatching activities.
- Tactics and technology—preventive patrol and rapid response to calls for service.
- Outcome—crime control.

"... officers' effectiveness in dealing with crime was judged by the number of arrests they made ..."

In retrospect, the reform strategy was impressive. It successfully integrated its strategic elements into a coherent paradigm that was internally consistent and logically appealing. Narrowing police functions to crime fighting made sense. If police could concentrate their efforts on prevention of crime and apprehension of criminals, it followed that they could be more effective than if they dissipated their efforts on other problems. The model of police as impartial, professional law enforcers was attractive because it minimized the discretionary excesses which developed during the political era. Preventive patrol and rapid response to calls for service were intuitively appealing tactics, as well as means to control officers and shape and control citizen demands for service. Further, the strategy provided a comprehensive, yet simple, vision of policing around which police leaders could rally.

The metaphor of the thin blue line reinforced their need to create isolated independence and autonomy in terms that were acceptable to the public. The patrol car became the symbol of policing during the 1930's and 1940's; when equipped with a radio, it was at the limits of technology. It represented mobility, power, conspicuous presence, control of officers, and professional distance from citizens.

During the late 1960's and 1970's, however, the reform strategy ran into difficulty. First, regardless of how police effectiveness in dealing with crime was measured, police failed to substantially improve their record. During the 1960's, crime began to rise. Despite large increases in the size of police departments and in expenditures for new forms of equipment (911 systems, computer-aided dispatch, etc.), police failed to meet their own or public expectations about their capacity to control crime or prevent its increase. Moreover, research conducted during the 1970's on preventive patrol and rapid response to calls for service suggested that neither was an effective crime control or apprehension tactic.[28]

Second, fear rose rapidly during this era. The consequences of this fear were dramatic for cities. Citizens abandoned parks, public transportation, neighborhood shopping centers, churches, as well as entire neighborhoods. What puzzled police and researchers was that levels of fear and crime did not always correspond: crime levels were low in some areas, but fear high. Conversely, in other areas levels of crime were high, but fear low. Not until the early 1980's did researchers discover that fear is more closely correlated with disorder than with crime.[29] Ironically, order maintenance was one of those functions that police had been downplaying over the years. They collected no data on it, provided no training to officers in order maintenance activities, and did not reward officers for successfully conducting order maintenance tasks.

Third, despite attempts by police departments to create equitable police allocation systems and to provide impartial policing to all citizens, many minority citizens, especially blacks during the 1960's and 1970's, did not perceive their treatment as equitable or adequate. They protested not only police mistreatment, but lack of treatment—inadequate or insufficient services—as well.

"Not until the early 1980's did researchers discover that fear is more closely correlated with disorder than with crime."

Fourth, the civil rights and antiwar movements challenged police. This challenge took several forms. The legitimacy of police was questioned: students resisted police, minorities rioted against them, and the public, observing police via live television for the first time, questioned their tactics. Moreover, despite police attempts to upgrade personnel through improved recruitment, training, and supervision, minorities and then women insisted that they had to be adequately represented in policing if police were to be legitimate.

Fifth, some of the myths that undergirded the reform strategy—police officers use little or no discretion and

the primary activity of police is law enforcement—simply proved to be too far from reality to be sustained. Over and over again research showed that use of discretion characterized policing at all levels and that law enforcement comprised but a small portion of police officers' activities.[30]

Sixth, although the reform ideology could rally police chiefs and executives, it failed to rally line police officers. During the reform era, police executives had moved to professionalize their ranks. Line officers, however, were managed in ways that were antithetical to professionalization. Despite pious testimony from police executives that "patrol is the backbone of policing," police executives behaved in ways that were consistent with classical organizational theory—patrol officers continued to have low status; their work was treated as if it were routinized and standardized; and petty rules governed issues such as hair length and off-duty behavior. Meanwhile, line officers received little guidance in use of discretion and were given few, if any, opportunities to make suggestions about their work. Under such circumstances, the increasing "grumpiness" of officers in many cities is not surprising, nor is the rise of militant unionism.

Seventh, police lost a significant portion of their financial support, which had been increasing or at least constant over the years, as cities found themselves in fiscal difficulties. In city after city, police departments were reduced in size. In some cities, New York for example, financial cutbacks resulted in losses of up to one-third of departmental personnel. Some, noting that crime did not increase more rapidly or arrests decrease during the cutbacks, suggested that New York City had been overpoliced when at maximum strength. For those concerned about levels of disorder and fear in New York City, not to mention other problems, that came as a dismaying conclusion. Yet it emphasizes the erosion of confidence that citizens, politicians, and academicians had in urban police—an erosion that was translated into lack of political and financial support.

Finally, urban police departments began to acquire competition: private security and the community crime control movement. Despite the inherent value of these developments, the fact that businesses, industries, and private citizens began to search for alternative means of protecting their property and persons suggests a decreasing confidence in either the capability or the intent of the police to provide the services that citizens want.

In retrospect, the police reform strategy has characteristics similar to those that Miles and Snow[31] ascribe to a defensive strategy in the private sector. Some of the characteristics of an organization with a defensive strategy are (with specific characteristics of reform policing added in parentheses):

- Its market is stable and narrow (crime victims).
- Its success is dependent on maintaining dominance in a narrow, chosen market (crime control).
- It tends to ignore developments outside its domain (isolation).
- It tends to establish a single core technology (patrol).
- New technology is used to improve its current product or service rather than to expand its product or service line (use of computers to enhance patrol).
- Its management is centralized (command and control).
- Promotions generally are from within (with the exception of chiefs, virtually all promotions are from within).
- There is a tendency toward a functional structure with high degrees of specialization and formalization.

A defensive strategy is successful for an organization when market conditions remain stable and few competitors enter the field. Such strategies are vulnerable, however, in unstable market conditions and when competitors are aggressive.

"... the reform strategy was unable to adjust to the changing social circumstances of the 1960's and 1970's."

The reform strategy was a successful strategy for police during the relatively stable period of the 1940's and 1950's. Police were able to sell a relatively narrow service line and maintain dominance in the crime control market. The social changes of the 1960's and 1970's, however, created unstable conditions. Some of the more significant changes included: the civil rights movement; migration of minorities into cities; the changing age of the population (more youths and teenagers); increases in crime and fear; increased oversight of police actions by courts; and the decriminalization and deinstitutionalization movements. Whether or not the private sector defensive strategy properly applies to police, it is clear that the reform strategy was unable to adjust to the changing social circumstances of the 1960's and 1970's.

The community problem-solving era

All was not negative for police during the late 1970's and early 1980's, however. Police began to score victories which they barely noticed. Foot patrol remained popular, and in many cities citizen and political demands for it intensified. In New Jersey, the state funded the Safe and Clean Neighborhoods Program, which funded foot patrol in cities, often over the opposition of local chiefs of police.[32] In Boston, foot patrol was so popular with citizens that when neighborhoods were selected for foot patrol, politicians often made the announcements, especially during election years. Flint, Michigan, became the first city in memory to return to foot patrol on a citywide basis. It proved so popular there that citizens twice voted to increase their taxes to fund foot patrol—most recently by a two-thirds majority. Political and citizen demands for foot patrol continued to expand in cities throughout the United States. Research into foot patrol suggested it was more than just politically popular, it contributed to city life: it reduced fear, increased citizen satisfaction with police, improved police attitudes toward citizens, and increased the morale and job satisfaction of police.[33]

Additionally, research conducted during the 1970's suggested that one factor could help police improve their record in dealing with crime: information. If information about crimes and criminals could be obtained from citizens by police, primarily patrol officers, and could be properly managed by police departments, investigative and other units could significantly increase their effect on crime.[34]

Moreover, research into foot patrol suggested that at least part of the fear reduction potential was linked to the order maintenance activities of foot patrol officers.[35] Subsequent work in Houston and Newark indicated that tactics other than foot patrol that, like foot patrol, emphasized increasing the quantity and improving the quality of police-citizen interactions had outcomes similar to those of foot patrol (fear reduction, etc.).[36] Meanwhile, many other cities were developing programs, though not evaluated, similar to those in the foot patrol, Flint, and fear reduction experiments.[37]

The findings of foot patrol and fear reduction experiments, when coupled with the research on the relationship between fear and disorder, created new opportunities for police to understand the increasing concerns of citizens' groups about disorder (gangs, prostitutes, etc.) and to work with citizens to do something about it. Police discovered that when they asked citizens about their priorities, citizens appreciated the inquiry and also provided useful information—often about problems that beat officers might have been aware of, but about which departments had little or no official data (e.g., disorder). Moreover, given the ambiguities that surround both the definitions of disorder and the authority of police to do something about it, police learned that they had to seek authorization from local citizens to intervene in disorderly situations.[38]

"...foot patrol and fear reduction experiments [helped] police to understand the increasing concerns of citizens..."

Simultaneously, Goldstein's problem-oriented approach to policing[39] was being tested in several communities: Madison, Wisconsin; Baltimore County, Maryland; and Newport News, Virginia. Problem-oriented policing rejects the fragmented approach in which police deal with each incident, whether citizen- or police-initiated, as an isolated event with neither history nor future. Pierce's findings about calls for service illustrate Goldstein's point: 60 percent of the calls for service in any given year in Boston originated from 10 percent of the households calling the police.[40] Furthermore, Goldstein and his colleagues in Madison, Newport News, and Baltimore County discovered the following: police officers enjoy operating with a holistic approach to their work; they have the capacity to do it successfully; they can work with citizens and other agencies to solve problems; and citizens seem to appreciate working with police—findings similar to those of the foot patrol experiments (Newark and Flint)[41] and the fear reduction experiments (Houston and Newark).[42]

The problem confronting police, policymakers, and academicians is that these trends and findings seem to contradict many of the tenets that dominated police thinking for a generation. Foot patrol creates new intimacy between citizens and police. Problem solving is hardly the routinized and standardized patrol modality that reformers thought was necessary to maintain control of police and limit their discretion. Indeed, use of discretion is the *sine qua non* of problem-solving policing. Relying on citizen endorsement of order maintenance activities to justify police action acknowledges a continued or new reliance on political authorization for police work in general. And, accepting the quality of urban life as an outcome of good police service emphasizes a wider definition of the police function and the desired effects of police work.

These changes in policing are not merely new police tactics, however. Rather, they represent a new organizational

approach, properly called a community strategy. The elements of that strategy are:

Legitimacy and authorization

There is renewed emphasis on community, or political, authorization for many police tasks, along with law and professionalism. Law continues to be the major legitimating basis of the police function. It defines basic police powers, but it does not fully direct police activities in efforts to maintain order, negotiate conflicts, or solve community problems. It becomes one tool among many others. Neighborhood, or community, support and involvement are required to accomplish those tasks. Professional and bureaucratic authority, especially that which tends to isolate police and insulate them from neighborhood influences, is lessened as citizens contribute more to definitions of problems and identification of solutions. Although in some respects similar to the authorization of policing's political era, community authorization exists in a different political context. The civil service movement, the political centralization that grew out of the Progressive era, and the bureaucratization, professionalization, and unionization of police stand as counterbalances to the possible recurrence of the corrupting influences of ward politics that existed prior to the reform movement.

The police function

As indicated above, the definition of police function broadens in the community strategy. It includes order maintenance, conflict resolution, problem solving through the organization, and provision of services, as well as other activities. Crime control remains an important function, with an important difference, however. The reform strategy attempts to control crime directly through preventive patrol and rapid response to calls for service. The community strategy emphasizes crime control *and prevention* as an indirect result of, or an equal partner to, the other activities.

"... police function ... includes order maintenance, conflict resolution, problem solving ..., and provision of services ..."

Organizational design

Community policing operates from organizational assumptions different from those of reform policing. The idea that workers have no legitimate, substantive interest in their work is untenable when programs such as those in Flint, Houston, Los Angeles, New York City, Baltimore County, Newport News, and others are examined. Consulting with community groups, problem solving, maintaining order, and other such activities are antithetical to the reform ideal of eliminating officer discretion through routinization and standardization of police activities. Moreover, organizational decentralization is inherent in community policing: the involvement of police officers in diagnosing and responding to neighborhood and community problems necessarily pushes operational and tactical decisionmaking to the lower levels of the organization. The creation of neighborhood police stations (storefronts, for example), reopening of precinct stations, and establishment of beat offices (in schools, churches, etc.) are concrete examples of such decentralization.

Decentralization of tactical decisionmaking to precinct or beat level does not imply abdication of executive obligations and functions, however. Developing, articulating, and monitoring organizational strategy remain the responsibility of management. Within this strategy, operational and tactical decisionmaking is decentralized. This implies what may at first appear to be a paradox: while the number of managerial levels may decrease, the number of managers may increase. Sergeants in a decentralized regime, for example, have managerial responsibilities that exceed those they would have in a centralized organization.

At least two other elements attend this decentralization: increased participative management and increased involvement of top police executives in planning and implementation. Chiefs have discovered that programs are easier to conceive and implement if officers themselves are involved in their development through task forces, temporary matrix-like organizational units, and other organizational innovations that tap the wisdom and experience of sergeants and patrol officers. Additionally, police executives have learned that good ideas do not translate themselves into successful programs without extensive involvement of the chief executive and his close agents in every stage of planning and implementation, a lesson learned in the private sector as well.[43]

One consequence of decentralized decisionmaking, participative planning and management, and executive involvement in planning is that fewer levels of authority are required to administer police organizations. Some police organizations, including the London Metropolitan Police (Scotland Yard), have begun to reduce the number of middle-management layers, while others are contemplating doing so. Moreover, as in the private sector, as computerized

information gathering systems reach their potential in police departments, the need for middle managers whose primary function is data collection will be further reduced.

External relationships

Community policing relies on an intimate relationship between police and citizens. This is accomplished in a variety of ways: relatively long-term assignment of officers to beats, programs that emphasize familiarity between citizens and police (police knocking on doors, consultations, crime control meetings for police and citizens, assignment to officers of "caseloads" of households with ongoing problems, problem solving, etc.), revitalization or development of Police Athletic League programs, educational programs in grade and high schools, and other programs. Moreover, police are encouraged to respond to the feelings and fears of citizens that result from a variety of social problems or from victimization.

"Community policing relies on an intimate relationship between police and citizens."

Further, the police are restructuring their relationship with neighborhood groups and institutions. Earlier, during the reform era, police had claimed a monopolistic responsibility for crime control in cities, communities, and neighborhoods; now they recognize serious competitors in the "industry" of crime control, especially private security and the community crime control movement. Whereas in the past police had dismissed these sources of competition or, as in the case of community crime control, had attempted to coopt the movement for their own purposes,[44] now police in many cities (Boston, New York, Houston, and Los Angeles, to name a few) are moving to structure working relationships or strategic alliances with neighborhood and community crime control groups. Although there is less evidence of attempts to develop alliances with the private security industry, a recent proposal to the National Institute of Justice envisioned an experimental alliance between the Fort Lauderdale, Florida, Police Department and the Wackenhut Corporation in which the two organizations would share responses to calls for service.

Demand management

In the community problem-solving strategy, a major portion of demand is decentralized, with citizens encouraged to bring problems directly to beat officers or precinct offices. Use of 911 is discouraged, except for dire emergencies. Whether tactics include aggressive foot patrol as in Flint or problem solving as in Newport News, the emphasis is on police officers' interacting with citizens to determine the types of problems they are confronting and to devise solutions to those problems. In contrast to reform policing with its selling orientation, this approach is more like marketing: customer preferences are sought, and satisfying customer needs and wants, rather than selling a previously packaged product or service, is emphasized. In the case of police, they gather information about citizens' wants, diagnose the nature of the problem, devise possible solutions, and then determine which segments of the community they can best serve and which can be best served by other agencies and institutions that provide services, including crime control.

Additionally, many cities are involved in the development of demarketing programs.[45] The most noteworthy example of demarketing is in the area of rapid response to calls for service. Whether through the development of alternatives to calls for service, educational programs designed to discourage citizens from using the 911 system, or, as in a few cities, simply not responding to many calls for service, police actively attempt to demarket a program that had been actively sold earlier. Often demarketing 911 is thought of as a negative process. It need not be so, however. It is an attempt by police to change social, political, and fiscal circumstances to bring consumers' wants in line with police resources and to accumulate evidence about the value of particular police tactics.

"... demarketing 911 ... is an attempt by police to ... bring consumers' wants in line with police resources ..."

Tactics and technology

Community policing tactics include foot patrol, problem solving, information gathering, victim counseling and services, community organizing and consultation, education, walk-and-ride and knock-on-door programs, as well as regular patrol, specialized forms of patrol, and rapid response to emergency calls for service. Emphasis is placed on

information sharing between patrol and detectives to increase the possibility of crime solution and clearance.

Measured outcomes

The measures of success in the community strategy are broad: quality of life in neighborhoods, problem solution, reduction of fear, increased order, citizen satisfaction with police services, as well as crime control. In sum, the elements of the community strategy include:

- Authorization—community support (political), law, professionalism.
- Function—crime control, crime prevention, problem solving.
- Organizational design—decentralized, task forces, matrices.
- Relationship to environment—consultative, police defend values of law and professionalism, but listen to community concerns.
- Demand—channelled through analysis of underlying problems.
- Tactics and technology—foot patrol, problem solving, etc.
- Outcomes—quality of life and citizen satisfaction.

Conclusion

We have argued that there were two stages of policing in the past, political and reform, and that we are now moving into a third, the community era. To carefully examine the dimensions of policing during each of these eras, we have used the concept of organizational strategy. We believe that this concept can be used not only to describe the different styles of policing in the past and the present, but also to sharpen the understanding of police policymakers of the future.

For example, the concept helps explain policing's perplexing experience with team policing during the 1960's and 1970's. Despite the popularity of team policing with officers involved in it and with citizens, it generally did not remain in police departments for very long. It was usually planned and implemented with enthusiasm and maintained for several years. Then, with little fanfare, it would vanish—with everyone associated with it saying regretfully that for some reason it just did not work as a police tactic. However, a close examination of team policing reveals that it was a strategy that innovators mistakenly approached as a tactic. It had implications for authorization (police turned to neighborhoods for support), organizational design (tactical decisions were made at lower levels of the organization), definition of function (police broadened their service role), relationship to environment (permanent team members responded to the needs of small geographical areas), demand (wants and needs came to team members directly from citizens), tactics (consultation with citizens, etc.), and outcomes (citizen satisfaction, etc.). What becomes clear, though, is that team policing was a competing strategy with different assumptions about every element of police business. It was no wonder that it expired under such circumstances. Team and reform policing were strategically incompatible—one did not fit into the other. A police department could have a small team policing unit or conduct a team policing experiment, but business as usual was reform policing.

Likewise, although foot patrol symbolizes the new strategy for many citizens, it is a mistake to equate the two. Foot patrol is a tactic, a way of delivering police services. In Flint, its inauguration has been accompanied by implementation of most of the elements of a community strategy, which has become business as usual. In most places, foot patrol is not accompanied by the other elements. It is outside the mainstream of "real" policing and often provided only as a sop to citizens and politicians who are demanding the development of different policing styles. This certainly was the case in New Jersey when foot patrol was evaluated by the Police Foundation.[46] Another example is in Milwaukee, where two police budgets are passed: the first is the police budget; the second, a supplementary budget for modest levels of foot patrol. In both cases, foot patrol is outside the mainstream of police activities and conducted primarily as a result of external pressures placed on departments.

"... team policing ... was usually planned and implemented with enthusiasm.... Then, with little fanfare, it would vanish ..."

It is also a mistake to equate problem solving or increased order maintenance activities with the new strategy. Both are tactics. They can be implemented either as part of a new

organizational strategy, as foot patrol was in Flint, or as an "add-on," as foot patrol was in most of the cities in New Jersey. Drawing a distinction between organizational add-ons and a change in strategy is not an academic quibble: it gets to the heart of the current situation in policing. We are arguing that policing is in a period of transition from a reform strategy to what we call a community strategy. The change involves more than making tactical or organizational adjustments and accommodations. Just as policing went through a basic change when it moved from the political to the reform strategy, it is going through a similar change now. If elements of the emerging organizational strategy are identified and the policing institution is guided through the change rather than left blindly thrashing about, we expect that the public will be better served, policymakers and police administrators more effective, and the profession of policing revitalized.

"If . . . policing . . is guided through the change rather than left blindly thrashing about, . . . the public will be better served . . ."

A final point: the classical theory of organization that continues to dominate police administration in most American cities is alien to most of the elements of the new strategy. The new strategy will not accommodate to the classical theory: the latter denies too much of the real nature of police work, promulgates unsustainable myths about the nature and quality of police supervision, and creates too much cynicism in officers attempting to do creative problem solving. Its assumptions about workers are simply wrong.

Organizational theory has developed well beyond the stage it was at during the early 1900's, and policing does have organizational options that are consistent with the newly developing organizational strategy. Arguably, policing, which was moribund during the 1970's, is beginning a resurgence. It is overthrowing a strategy that was remarkable in its time, but which could not adjust to the changes of recent decades. Risks attend the new strategy and its implementation. The risks, however, for the community and the profession of policing, are not as great as attempting to maintain a strategy that faltered on its own terms during the 1960's and 1970's.

Notes

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The Executive Session on Policing, like other Executive Sessions at Harvard's Kennedy School of Government, is designed to encourage a new form of dialog between high-level practitioners and scholars, with a view to redefining and proposing solutions for substantive policy issues. Practitioners rather than academicians are given majority representation in the group. The meetings of the Session are conducted as loosely structured seminars or policy debates.

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GOAL/QPC

COMMUNITY POLICING

THE LAWRENCE EXPERIENCE

BY
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ABOUT GOAL/QPC

GOAL/QPC was founded as a non-profit organization in Lawrence, Massachusetts by community leaders to foster better relationships between government, labor, and management and to promote economic development in the Lawrence area through successful quality methods. Since 1978 GOAL/QPC has grown into a $10 million research and training organization specializing in understanding TQM as it is practiced around the world.

Total Quality Management has been used by private and public organizations to help people improve daily the procedures, systems, quality, cost and productivity related to their job. This continuous improvement process is the focus of today's quality revolution.

GOAL/QPC has initiated research committees for the application of TQM in public and private sectors. We hope to share successful practices with leaders from all sectors to promote TQM practices. We have also instituted a government TQM Application Committee. For more information contact Lawrence LeFebre of GOAL/QPC, Methuen, Massachusetts.

Bob King
Executive Director

Community Policing In Lawrence, Massachusetts

An Evaluation

by
Allen W. Cole, Chief of Police
and
David Kelley, Lieutenant

Over the past several years, sharp increases in crime, gangs, violence, drugs and urban decay have severely impacted the quality of life for the citizens, neighborhoods, institutions and businesses of Lawrence and strained the resources of the Police Department. Recognizing these limited resources and the impact traditional police tactics were achieving in combating these problems, the Lawrence Police Department began rethinking their basic strategies.

The city of Lawrence, Massachusetts, is an urban city of 70,000, people, 28 miles north of Boston. It's 70,000 residents live in only seven square miles. Lawrence's population is 50% white and 47% Hispanic. It was once a working class city with most of it's citizens working in the great textile mills, but the mills closed down and urban decay began to set in. Lawrence started to see an increase in crime rates, an increase in drug use and sales, home ownership dropped drastically, gang activities were increasing, and neighborhoods were in various stages of decay. The people of Lawrence wanted to do something to reverse this trend and have expressed a commitment to work together with city government to stop this decay.

In November, 1989, a Citizen's Advisory Committee was formed to give the Lawrence Police Department input as to the Community's needs and concerns. The seven-member committee represented a cross-section of the City, including members from various neighborhood and business groups and members from the Anglo and Hispanic community. The Committee met on November 1, 1989, and by using the Nominal Group Technique (NGT), their concerns and needs were identified and prioritized as they related to law enforcement issues in the City of Lawrence.

Nominal Group Technique was used, not only to encourage input by all members of the group, but also to ensure that each member had equal input. The committee identified 47 objectives for the police department and were then asked to prioritize the top seven. This process allowed the department to identify not only individual interest group objectives, but objectives that were of a concern to the majority of the groups represented. This was intended to allow us to concentrate on problems that were of concern to the most people.

Seven concerns were identified by all seven members of the Advisory Committee. Of these concerns, "Instituting foot patrols in the neighborhoods and business community" was identified as being the most important. The desire for foot patrols was also expressed by many other individuals and groups in the city.

The Police Department began exploring how to best address these desires. We did not want to - nor could we afford to - put officers on foot patrol if that was not going to reduce or at least control some of the problems the city was facing. Our fear was that the public wanted some type of return to a nostalgic era when the friendly beat cop was seen walking his beat twirling his baton. We were also concerned that the public would judge the foot patrol officer by how often he was seen in the neighborhood rather than by actual results.

We knew that it would not be realistic to assign foot patrol officers to every neighborhood of the city, with the city and the department facing budget cuts, it would be impossible to even come close. We wanted something that was more than just a program, where we would assign foot patrols to a certain neighborhood for a length of time and then pull them out to be put into another neighborhood. We wanted to develop a departmental philosophy that would encourage greater police and citizen cooperation and commitment to dealing with neighborhood problems.

Over the past two decades, innovative law enforcement practitioners began experimenting with new pproaches to the problems they faced. The police/community relation_ concept, team policing, the Flint Michigan foot patrol program, neighborhood policing and problem oriented policing were tried. All of these concepts remained only programs, some officers in the organization participated in the program, but there was not a complete

philosophical change throughout the organizational structure. Our department sought a concept which incorporated the best of these programs.

The Lawrence Police Department has recently become active in Total Quality Management (TQM) in an attempt to develop new and better ways of doing things that are more directly related to the needs of our citizens. GOAL/QPC (1990 p7) describes Total Quality Management as "a structured system for meeting and exceeding customer needs and expectations by creating organization-wide participation in the planning and implementation of breakthrough and continuous improvement processes." Total Quality Management requires an organization to be close to its customers (citizens), and one of the first things that TQM requires is to identify your customer's needs. We used several of the 7 management and planning tools, including the Affinity Diagram, Interrelationship digraph and prioritization matrices to identify our customer needs. The TQM process allowed us to see that what our customers were really concerned with was "feeling safe" and having their neighborhoods free of "disorder problems."

We then contacted the National Neighborhood Foot Patrol Center at the School of Criminal Justice, Michigan State University seeking information. It was through their Neighborhood Foot Patrol Center that we began seriously considering utilizing the Community Policing concept. With the help of GOAL/QPC, we started to gather information on Community Policing. GOAL/QPC sent a team of officers to Michigan State University for a seminar on Community Policing, and then to New York City to observe their Community Police Officer Program (CPOP) in action.

While Community Policing does not strictly mandate walking patrols, it does require a close working relationship between the officers working a specific neighborhood and the people of that neighborhood, one that cannot be achieved by an officer in a patrol car responding just to calls for service. Trojanowicz and Bucqueroux (1990 P. XIII) describe Community Policing as "both a philosophy and an organizational strategy that allows the police and community residents to work closely together in new ways, to solve the problems of crime, fear of crime, physical and social disorder, and neighborhood decay." From our readings on Community Policing and our talking with other agencies that had implemented Community Policing, we felt

there were three underlining principles of Community Policing that would meet the needs of the City of Lawrence. The principles are, 1) Community Policing is a philosophy that should be shared and practiced by the whole department, not just a program that may be here today and then gone tomorrow; 2) Community Policing uses problem solving techniques to deal with neighborhood problems; and 3) this problem solving involves both the line officers and the people living in a neighborhood.

After reviewing the concept of community Policing and determining that it was something we wanted to try in Lawrence, we needed to pick an area to put Community Policing into practice. We wanted to select a neighborhood that was having serious problems and one where we could get the cooperation and community involvement that were needed to institute Community Policing. After reviewing the crime statistics of the various neighborhoods and discussing which neighborhood would be best to try Community Policing in, we chose the Arlington neighborhood. The Arlington neighborhood is a 45 square block area consisting mostly of multiple family housing with little single family housing. The neighborhood has two large elderly housing projects, three elementary schools and several parks and playgrounds. There are also three business areas housing neighborhood grocery stores, small restaurants and small clothing stores. The area was plagued with open-air drug dealing, car thefts, vandalism and gang-related harassment activities. We also chose that neighborhood as it was adjacent to the Back Bay neighborhood, where we intended to expand into if and when conditions allowed.

Within the Arlington Neighborhood, the team of 6 CPO's selected an initial target area and mainly concentrated their efforts on eliminating street level drug dealing after reviewing police calls-for-service and crime patterns in the neighborhood. Within the target area, residents and business people were encouraged to identify their concerns to CPO's through a combination of scheduled community meetings and by CPO's going door to door or interviewing residents in the street. These contacts also allowed the CPO's to develop a profile of the target area and the people who live and work there, assisted in identifying and prioritizing problems, allowed the CPO's to explain to residents enforcement actions planned and aided in identifying criminal offenders.

After substantially eradicating the most serious problems in the initial target area, CPO's, still working as a team, identified additional target areas to concentrate on while at the same time maintaining a highly visible presence in the initial area(s) to prevent problems from re-appearing. This strategy was employed until such time as the CPO's determined that conditions in the entire neighborhood could be maintained (and improved upon) by officers working alone in a specific beat area.

Based upon their progress in using this strategy, the program expanded into the Back Bay neighborhood in the spring of 1991. The neighborhoods were then divided into three beat areas, drawn after taking into account population density, natural boundaries, neighborhood boundaries, the prevalence of commercial establishments and most important, the number and type of crime and order maintenance conditions. An effort was made to include at least one elementary school in each beat. The geographic area was kept small enough so that an officer could get around the entire beat often enough to maintain direct contact with residents.

Two officers were assigned to each beat area, one working 9:00 AM to 5:00 PM, the other from 5:00 PM to 1:00 AM. The officers work a 4 on - 2 off schedule ensuring their presence four out of six days on each shift and their groups staggered so that on their days off, the officer from the other shift is working. Barring unusual circumstances, each beat is covered at least 8 hours per day, 7 days a week. Additionally, CPO's from adjacent beats are encouraged to check on conditions when a beat is not covered.

In July, 1992, two additional officers joined the program, allowing the addition of a fourth beat area in the Newbury Street neighborhood. All CPO's operate out of one of two elderly housing complexes. The Arlington Neighborhood officers operate out of Rita Hall Apartments, the Newbury Street/Back Bay officers out of Valebrook Apartments. The office space is donated by the property owners. The idea of being stationed out of elderly complexes originated with the CPO's themselves. They wanted to be stationed in the neighborhood rather than at headquarters. They also wanted their time spent off the street on office duties to produce some benefit in the form of an increased sense of security. The elderly residents of both complexes, totalling over 300, overwhelmingly welcome the CPO's periodic presence.

Such innovative ideas are encouraged and will become even more common as Community Policing spreads throughout the law enforcement community. A sample of other innovative strategies employed by CPO's to combat neighborhood problems are described below.

- Summer Street between Newbury Street and Union Street was plagued with numerous open air drug sellers and was the scene of several instances of drug related violence, including a murder. Gangs opened many fire hydrants during the warm weather, some seeking to keep cool, others using the diversion to rob passing motorists. CPO's closed Summer Street, a one way street, arranged for a spray bar to be put in place on the street and allowed residents to travel the wrong way down the street to reach their homes. Travel was thus restricted to residents, those having no reason to be on the street were issued $35.00 citations for traveling the wrong way. The kids kept cool and the drug trade was disrupted long enough during the heat wave that the dealers closed up shop.

- At Park and Hampshire Streets, a gang of car thieves congregated in a parking lot behind an apartment building. The gang was causing a constant disturbance in an area, playing handball at all hours of the day and night, playing loud music, littering and in general intimidating the people who lived in the area. There were several instances of gang members robbing motorists stopped for traffic lights. CPO's talked with the gang members and building residents. Neighbors agreed to allow the group to play handball as long as the problems went away. The area was posted against trespassing and all graffiti painted over and litter removed by gang members. All parties agreed that the CPO's would determine when handball would be allowed. The problem has successfully been resolved and the officers have had to close the handball court only a couple of times for minor transgressions, otherwise the kids and the others in the neighborhood are getting along fine and officers do not have to continue to respond to numerous nuisance calls.

- On Newbury Street between Orchard and Summer Streets, several dealers openly sold drugs to the hundreds of customers from outside of

the neighborhood. Most of these people, in fact, were from outside of the city, having gotten off the nearby Route 495. CPO's posted the location with large (30" x 42") signs which read: "Warning - area under surveillance due to illegal sales of drugs - motor vehicle registration numbers being recorded by police." The CPO's then did nothing more than taking down plate numbers of the cars which aroused suspicion. These car owners were then sent a letter informing them of the cars presence in the area. Each passing day saw a decrease in traffic through the area. After approximately three weeks, the traffic was down to a trickle.

- Before tackling a particular block, officers seek as much information from residents regarding criminal activity. CPO's noted that many residents were afraid to be seen talking to them. The CPO's then canvassed the block with questionnaires with pre-paid, self-addressed envelopes which people could mail in. Returns of these questionnaires have produced several pieces of valuable information on drug dealers operations as well as hightened the paranoia level of the dealers, oftentimes resulting in them making stupid mistakes which lead to their arrest.

- At a meeting of Bromfield Street residents, CPO's listened as residents told of how they continuously observed people dealing drugs on the street who avoided arrest by hiding their drugs in various obscure locations. CPO's sought out these residents after the meeting and set up a reporting system using a voice activated beeper. Over the next several days, CPO's armed with information supplied over the beeper would nonchalantly approach the dealer, search him, then two or three other locations, then "find" the drugs in the hiding spot they knew all along. Drugs were found under the garbage barrels, inside the fence post caps and inside mail boxes. The CPO would then ask if anybody wanted to claim ownership to the drugs, none did. The drugs were turned in as found property, the dealers profits eliminated and the problem resolved. The dealers were suspicious that neighbors were somehow turning them in because CPO's kept finding drugs, no matter where on the street they set up. Because so many residents on the two blocks participated in the

operation, they were never able to figure out who they were or how they got word to the CPO's so fast.

- The corner of Spruce and Park Streets was the City's heaviest drug trafficking location in the fall of 1991. For two weeks, CPO's engaged in highly visible patrol activities on foot and in cruisers, 7 days a week, 16 hours per day. Not surprisingly, dealers would not sell, buyers would not buy. Drug activity came to a grinding halt. Wanting to move on to the next target area, but fearful that conditions would revert right back once they left, CPO's wanted to try something that would maintain the improvements made without the intensive manpower requirements. They intercepted an old Police Special Operations truck on its way to the junk yard, spent $42.00 to disguise it to look like a surveillance van by painting over all of its lettering, tinting its windows and placing several round mirrors on the back of the van (they were round stick-on mirrors but passed for two-way mirrors.) The van was then parked in a vacant lot at the corner. For the next few weeks, uniformed officers would covertly deliver coffee (in empty cups) and pizza (in empty boxes) and other packages (of junk) to the van when "the coast was clear." As they hoped for, passing motorists and neighbors saw their activities and word quickly spread on the street that "there are cops inside the van" and/or "the cops are videotaping everything" and drug dealing there never resumed.

- Several stolen Mazdas were recovered within a two square block area of Park and Walnut Streets. The cars were found stripped of engine and body parts. The suspected "Chop Shop" was located in an isolated spot, making surveillance impossible. Working with the City's building inspector and Fire inspector, CPO's visited the garage and had it closed down for numerous fire and safety code violations. Stolen Mazdas stopped appearing immediately and the garage has since reopened with a new (law-abiding) owner.

These small successes, combined with overwhelmingly positive feedback from the neighborhood left us greatly encouraged. Still, the department wanted some means of evaluating whether Community Policing was worth the effort. From the outset, we recognized that traditional productivity measures failed to

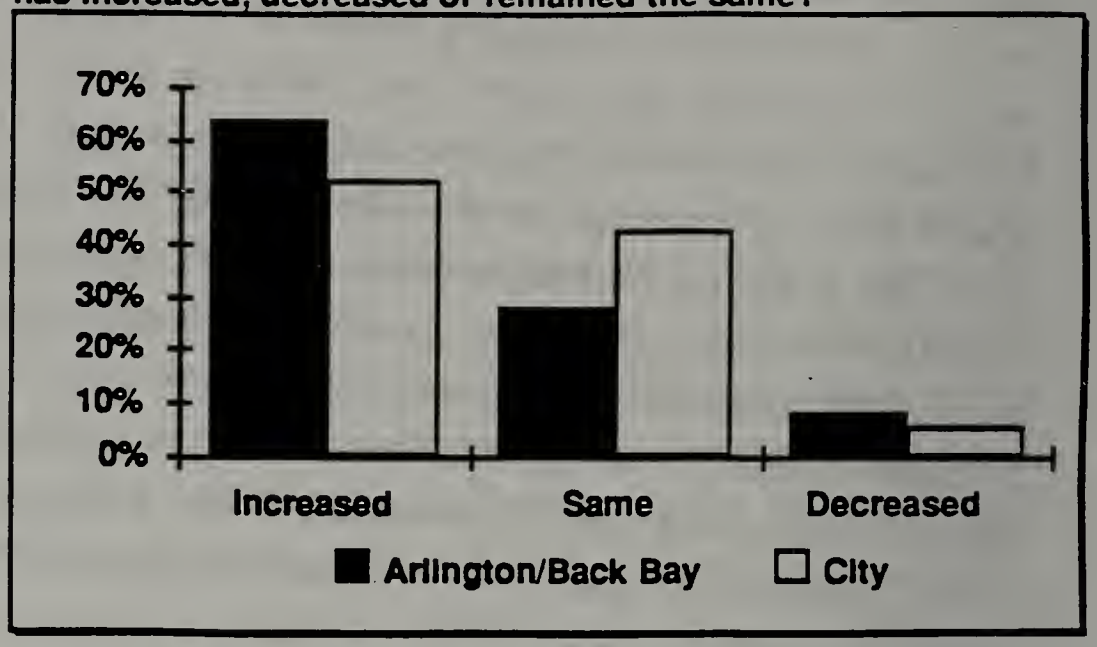
evaluate issues such as physical and social disorder, or fear of crime, issues which Community Policing is designed to address. Herman Goldstein (1990) recognized that the police deal with a whole multitude of troublesome situations that may or may not require the use of the criminal law. He further states that once we realize that we should be solving a whole host of problems, then we need to find other measures of effectiveness than just the use of traditional crime statistics. In addition, we felt that these measures (i.e. calls for service, reported crimes, etc.) would not accurately measure progress if they became distorted by people becoming more likely to report matters to the police, something the Community Police Officers encourage and which one could reasonably expect from people having more confidence in the police's ability to resolve a problem.

We prepared a questionnaire to measure fear of crime and various social disorder and neighborhood decay problems as perceived by residents of various neighborhoods in the city. The questionnaire contains 60 questions, most designed to measure fear of crime and social disorder. They were prepared in both English and Spanish because of Lawrence's large Hispanic population. A total of 3,676 questionnaires were sent out in August of 1990, 2,276 to people living in the Arlington neighborhood, 1,400 to other neighborhoods of the city.

We had a good response rate with 26.2% (963 of the 3,676) of the questionnaires returned city-wide. The return rate for the Arlington neighborhood was 20.1% (462 of 2,276) and 35.8% (501 of 1,400) for the rest of the city. The responses were recorded for the various questions and the raw scores were converted to percentages for comparison. The first three questions were designed to measure fear and perception of crime.

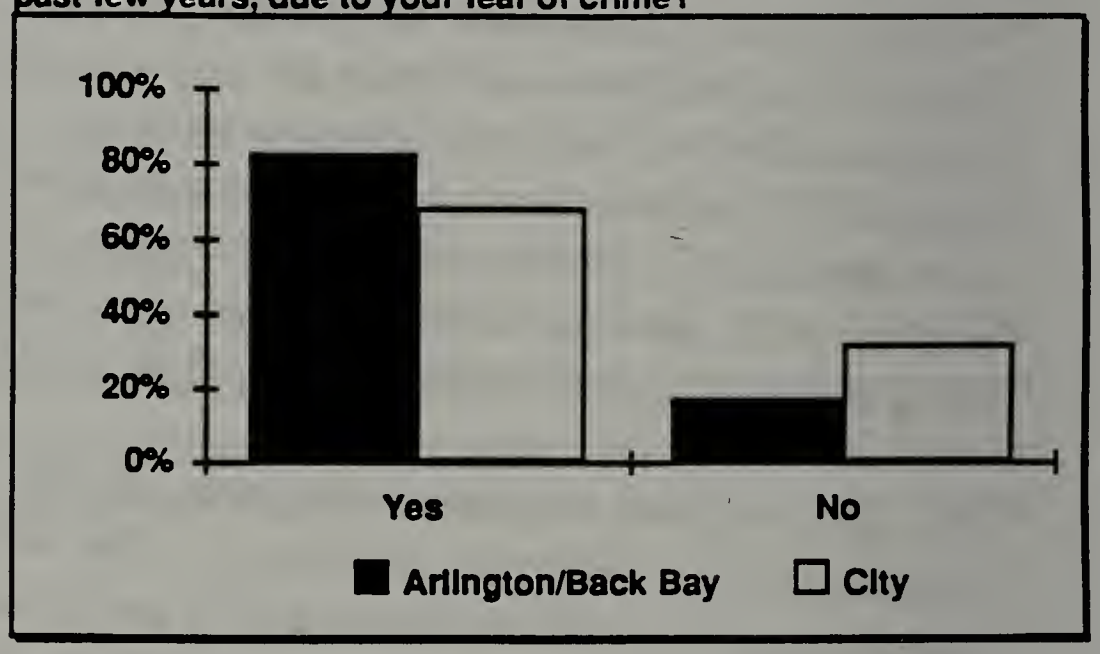
Most city residents felt that crime had increased in the past year, but a greater percentage of people in the Arlington/Back Bay neighborhood (63.98%) felt there had been an increase, compared with the rest of the city (51.9%).

Within the past year, do you think crime in your neighborhood has increased, decreased or remained the same?



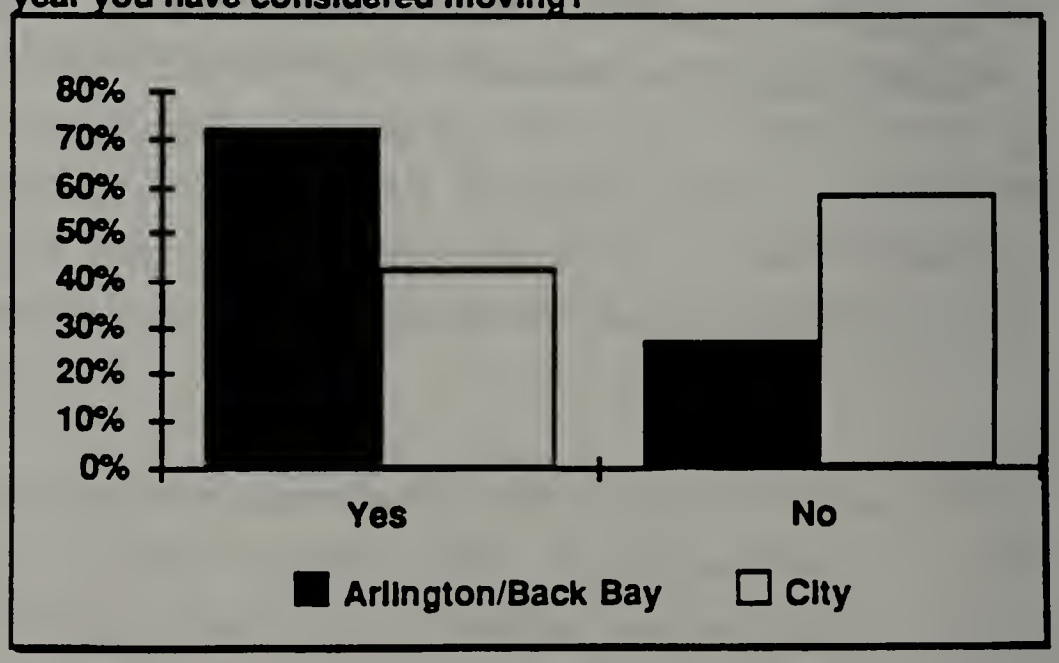
Residents of the city at large (68.24%) and the Arlington/Back Bay neighborhood (83.5%) both indicated changing their activities due to fear of crime.

In general, have you limited or changed your activities in the past few years, due to your fear of crime?



This question shows a drastic difference in the level of fear between residents of the Arlington/Back Bay neighborhood and the city as a whole. The majority of residents in other city neighborhoods (57.65%) stated that they had not considered moving

Is your neighborhood dangerous enough that during the past year you have considered moving?



compared with only 27.31% in the Arlington/Back Bay neighborhood

Six questions asked residents how worried they were during the day about house breaks, walking in the neighborhood, driving in the neighborhood, their children being exposed to danger, their children being exposed to drugs and strangers loitering in the area.

	Arlington/Back Bay			City		
How worried are you during the day about:	Very Worried	Worried	Not Worried	Very Worried	Worried	Not Worried
House Breaks	55.0%	35.2	9.8%	34.0%	50.1%	15.9%
Walking in the Neighborhood	29.5%	43.0%	27.5%	12.6%	30.8%	56.6%
Driving in the Neighborhood	19.1%	40.2%	40.7%	7.8%	19.3%	72.8%
Children exposed to Danger	60.4%	24.5%	15.0%	33.1%	34.1%	32.8%
Children exposed to Drugs	62.8%	20.1%	17.2%	45.0%	20.8%	34.2%
Strangers loitering in the Area	51.4%	34.8%	13.8%	32.8%	35.9%	31.3%

The same six questions were again asked regarding the night time. There was a consistent increase in the level of fear, compared to the same issues during the day.

	Arlington/Back Bay			City		
How worried are you during the night about:	Very Worried	Worried	Not Worried	Very Worried	Worried	Not Worried
House Breaks	68.2%	23.4%	8.4%	49.1%	38.9%	11.9%
Walking in the Neighborhood	54.4%	33.0%	12.6%	30.9%	42.7%	26.4%
Driving in the Neighborhood	38.7%	36.8%	24.5%	17.5%	25.3%	57.2%
Children exposed to Danger	67.9%	19.0%	13.0%	40.2%	30.4%	29.4%
Children exposed to Drugs	67.4%	17.3%	15.4%	45.0%	21.5%	33.4%
Strangers loitering in the Area	62.6%	26.5%	10.9%	42.4%	32.2%	25.4%

After looking at these individual questions that dealt with fear of crime, we developed a fear index to measure the total level of fear in each neighborhood. Looking at percentages of respondents between the two different areas is difficult and measuring any changes over the years would be even more so. We

developed a formula for each of the 15 questions dealing with fear of crime and then totaled those individual scores to come up with a fear index. The responses to each question were given a numerical weight and then an average score was computed.

The first question asked whether crime had increased in the past year. A value of 5 was given to an "increased" response, 3 to the "remained the same" response, 0 to the "decreased" response. The following formula for this question was therefore developed:

$$\frac{((\#\ \text{increased} \times 5)+(\#\ \text{same} \times 3)+(\#\ \text{decreased} \times 0))}{\text{total responses}}$$

The second question asked whether a person changed their activities due to fear of crime. A value of 5 was given to a "yes" response and a value of 0 to a "no" response:

$$\frac{((\#\ \text{yes} \times 5)+(\#\ \text{no} \times 0))}{\text{total responses}}$$

The third question asked whether the person had considered moving because of their fear of crime. Because moving out of a neighborhood due to fear of crime is a drastic response, a value of 9 was given to a "yes" response and a value of 0 was assigned to a "no" response:

$$\frac{((\#\ \text{yes} \times 9)+(\#\ \text{no} \times 0))}{\text{total responses}}$$

Twelve additional questions asked people how worried they were about various crime problems. A value of 5 was given to a "very worried" response, 3 to "worried" and 0 to a "not worried" response:

$$\frac{((\#\ \text{very worried} \times 5)+(\#\ \text{worried} \times 3)+(\#\ \text{not worried} \times 0))}{\text{total responses}}$$

The 15 individual scores were then totaled to obtain a fear index for the neighborhood. The scores range would be from a low of zero indicating no fear, 39 indicating moderate fear, to a high of 79 indicating extreme fear. The Arlington/Back Bay neighborhood scored a 57.23 and the City scored a 42.08.

As Community Policing is intended to deal with social and physical disorder problems as well as crime and fear of crime, we also wanted to measure

people's concerns with these issues. We selected seventeen items and asked each respondent how much of a problem each of them were in their neighborhood.

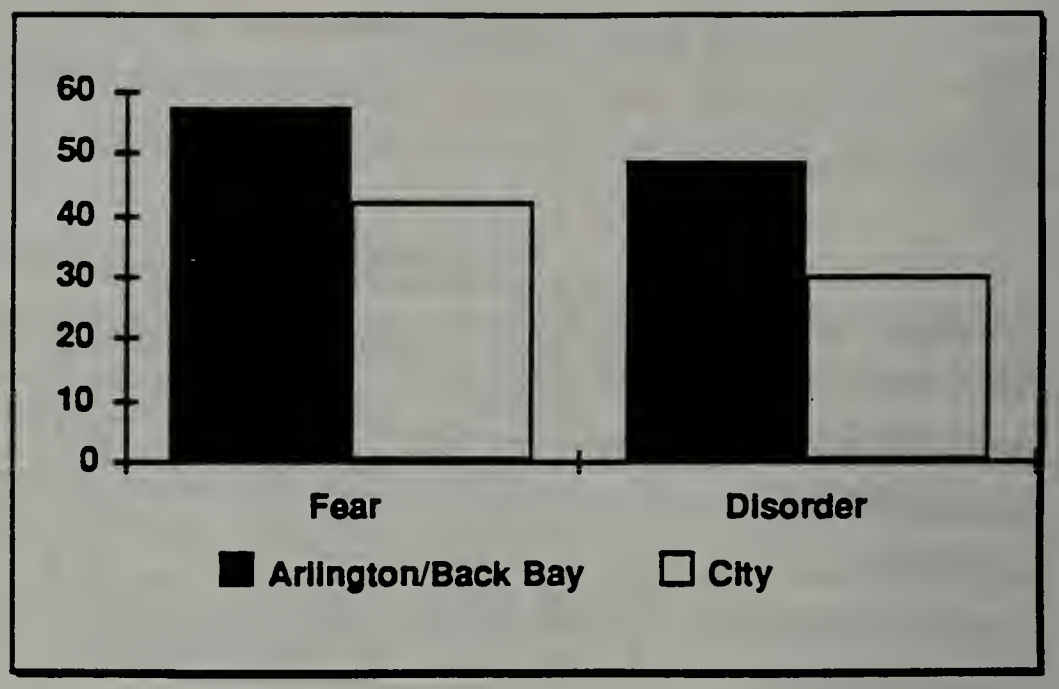
	Arlington/Back Bay			City		
How big of a problem are:	Big Problem	Problem	No Problem	Big Problem	Problem	No Problem
Abandoned cars	32.5%	42.9%	24.7%	8.8%	34.6%	56.6%
Elderly victimization	18.3%	34.7%	47.0%	6.6%	25.0%	68.4%
Loud parties	43.2%	33.3%	23.5%	18.5%	28.9%	52.6%
Muggings/Robberies	22.4%	41.3%	36.3%	8.3%	29.8%	62.0%
Neighbors fighting	30.6%	36.9%	32.5%	15.3%	26.4%	58.3%
Traffic parking problems	40.3%	35.7%	23.9%	24.5%	34.2%	41.3%
Car Breaks	56.3%	29.5%	14.2%	30.4%	44.7%	24.9%
House Breaks	43.1%	39.6%	17.3%	20.3%	47.9%	31.8%
People drinking too much	43.3%	30.9%	25.8%	22.8%	24.1%	53.1%
People Selling Drugs	56.9%	24.8%	18.3%	23.5%	29.9%	46.7%
People Stealing Cars	57.7%	30.7%	11.6%	32.7%	38.4%	28.9%
People Using Drugs	57.5%	26.0%	16.5%	22.5%	35.6%	41.8%
Prostitutes	19.3%	23.4%	57.4%	9.7%	11.6%	78.6%
Sexual Assaults	7.4%	20.1%	72.5%	2.2%	10.7%	87.1%
Run Down Buildings	39.4%	32.0%	28.6%	15.9%	23.7%	60.5%
Stray Barking Animals	16.0%	32.2%	51.8%	11.1%	27.2%	61.7%
Vandalism	50.3%	34.8%	14.8%	22.4%	38.0%	39.6%

As we did with the fear index, we developed a disorder index from the 17 questions, base upon the following formula:

$$\frac{((\#\text{ big problem} \times 5)+(\#\text{ problem} \times 3)+(\#\text{ no problem} \times 0))}{\text{total responses}}$$

We obtained a measurement for each neighborhood ranging from zero to 85. A score of zero would indicate no neighborhood disorder, a score of 51 would indicate moderate disorder and a score of 85 would indicate extreme neighborhood disorder.

The Arlington/Back Bay neighbor scored a 48.32 on the disorder index while the rest of the City scored a 30.00.



It became very evident, after reviewing the August, 1990, survey, that there were more and a greater degree of social and physical disorder problems in the Arlington/Back Bay neighborhood, compared to the rest of the city. This survey not only gave us a before picture of the neighborhood for evaluation purposes, but also gave the Community Police Officers a better idea of what social and physical disorder conditions they needed to address.

While receiving high praise from residents of the Arlington/Back Bay neighborhood, we set out to see if there was any measurable difference after a year of doing Community Policing. In September, 1991, we sent out a total of 3,050 questionnaires to the residents of Lawrence, 791 were returned for a response rate of 25.9% (22.6% Arlington/Back Bay, 29.2% City.) Analysis indicates that there was a slight reduction in fear and disorder in the Arlington/Back Bay neighborhood, while the rest of the City experienced an increase. The majority of residents in both areas felt that crime had increased in the last year. However, the percentage for City residents rose slightly between 1990 and 1991 (54.02% and 54.26% respectively) while the percentage in the Arlington/Back Bay neighborhood dropped from 63.43% in 1990, to 53.52% in 1991.

Within the past year, do you think crime in your neighborhood has:

	1990		1991	
	Arlington Back Bay	City	Arlington Back Bay	City
Increased	63.43%	54.02%	53.52%	54.26%
Decreased	7.90%	5.98%	8.45%	8.51%
Remained the Same	28.67%	40.00%	38.03%	37.23%

A majority of residents of the Arlington/Back Bay neighborhood and the rest of the City (82.08% and 79.23% respectively) indicated that in recent years they have changed their activities due to their fear of crime. However, the Arlington/Back Bay percentage decreased 1.44 percentage points while the City percentage increased 8.97 percentage points.

In general, have you limited or changed your activities in the past few years due to your fear of crime?

	1990		1991	
	Arlington Back Bay	City	Arlington Back Bay	City
Yes	83.52%	70.26%	82.08%	79.23%
No	16.48%	29.74%	17.92%	20.77%

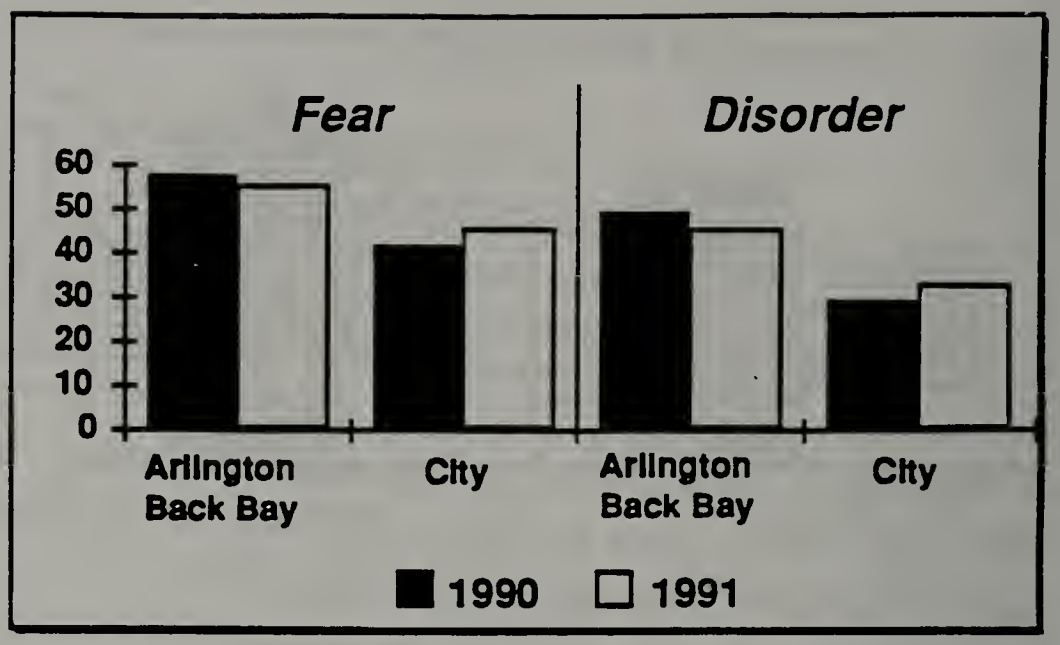
The Arlington/Back Bay neighborhood and the rest of the City saw a slight increase in the number of people who have considered moving because of their fear of crime.

Is your neighborhood dangerous enough that during the past year you have considered moving?

	1990		1991	
	Arlington Back Bay	City	Arlington Back Bay	City
Yes	72.34%	46.53%	74.16%	49.47%
No	27.66%	53.47%	25.84%	50.53%

It is difficult to evaluate whether there has been any change in the fear level by looking at the responses of each individual question, so we used the fear index and compared the 1990 fear index with the 1991 index. The fear index for the Arlington/Back Bay neighborhood dropped slightly (.49), from 57.23 in 1990 to 56.72 in 1991. This is more significant when it is compared to the 2.52 increase in the fear index for the rest of the City which went from 42.08 in 1990 to 44.60 in 1991

As with the fear index, we compared the disorder index from 1990 to 1991. In 1991 the disorder index for the Arlington/Back Bay neighborhood decreased 1.39, dropping from a 48.32 in 1990, down to a 46.93 in 1991. At the same time, the City's disorder index increased 1.49 in 1991, going from a 30.00 in 1990 to 31.49 in 1991.



Despite misgivings with traditional measures, we did compare calls for service and reported crimes for the Arlington/Back Bay neighborhood and the rest of the city, from September 1, 1989 through August 31, 1990, the year before we instituted Community Policing, with the same period a year later. The Arlington/Back Bay neighborhood had a 3.9% reduction (6,924 vs. 6,656) in calls for service while the rest of the city experienced a 5.6% increase (62,055 vs. 65,530.) The reduction of calls for service in the Arlington/Back Bay neighborhood while the rest of the city experienced an increase may indicate that Community Policing was successful in solving problems so that the police are not continuously responding to the same incidents.

Data on Community Policing's impact on reported crime in the Arlington/Back Bay Neighborhood is inconclusive. The entire city experienced a reduction in most reported crimes except assaults. We selected Part I UCR crimes and vandalism for the two time periods to measure reported crimes. Both the Arlington/Back Bay neighborhoods and the rest of the city saw a reduction in homicide, rape, breaking and entering, larceny, motor vehicle theft, and vandalism. The Arlington/Back Bay neighborhoods and the entire city both saw an increase in assaults. The greatest difference between reported crimes was in robberies, the city experienced a reduction while the Arlington/Back Bay neighborhood experienced an increase.

Perhaps the most encouraging aspects of Community Policing are in those areas which are difficult to measure. We have seen an increase in people participating in dealing with their problems, getting involved in boarding up abandoned buildings, cleaning up parks, and setting up crime watch programs. Residents who have had direct contact with the officers doing Community Policing have praised their work and want to see Community Policing expanded. The officers doing Community Policing also are giving Community Policing high praise. They like the fact that they get to solve problems instead of just responding to calls for service They report greater job satisfaction now and like working with residents in taking a problem from it's identification to resolution. Officers also have reported that they are receiving a lot more information about criminal activity now that they have developed a personal relationship with the people in "their" neighborhood.

A 3.9 percentage point reduction in calls for service, a .49 point reduction in fear, and a 1.39 point reduction in disorder, while not significant, compare favorably against the increases seen in neighborhoods where Community Policing is not employed. Fear of crime and people's perception of social disorder are not easily changed in one short year. Even when improvements are made in their neighborhood, residents are not likely to change their attitudes until they see long term improvements, remembering past police efforts where the police have come into a neighborhood with great fanfare, cleaned things up and left, only to have problems reappear a short time later.

Overall, we feel that Community Policing has been successful and something that we intend to implement department-wide. Law enforcement is not used to operating in a Community Policing mode, the changeover from a bureaucratic, authoritarian, and 911 driven organization into a more customer orientated organization will take time and effort. The Total Quality Management (TQM) process will insure that we are customer focused and that the whole department becomes involved in the continuous improvement of our service. TQM's 7 QC and 7 management and planning tools will assist us in the problem solving process of Community Policing and once the Community Policing philosophy becomes the standardized daily management process of the department, we will be able to more effectively deal with our citizen's needs. The Community Policing and TQM philosophies will not be easily institutionalized in law enforcement organizations therefore, those involved in

the change must make the commitment to embrace and completely understand the total philosophy, otherwise Community Policing will be just another program that is here today and gone tomorrow.

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